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TRIAL

OF

THE MAJOR WAR CRIMINALS

BEFORE

THE INTERNATIONAL MILITARY TRIBUNAL

NUREMBERG

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PROCEEDINGS

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TWO HUNDRED AND TWELFTH DAY

Tuesday, 27 August 1946

Morning Session

DR. HANS LATERNSER (Counsel for the General Staff and OKW): Mr. President, I should like to take 2 minutes of the Tribunal's time. Yesterday after the conclusion of the interrogation of the witness Schreiber I received a written report to the effect that, to begin with, research work, as far as bacteriology was concerned, was expressly ordered to be limited to defense, and secondly, that a suggestion of the Army Medical Inspectorate in the autumn of 1943, that all means for an attack should be exhausted, was strongly objected to by the OKW and particularly by Field Marshal Keitel, who pointed out that this was prohibited, and would in no way be considered.

This material I gathered from a letter which was put on my desk yesterday, a letter which I read yesterday evening for the first time.

These two points which I have just quoted as proof can be testified to by Colonel Bürker of the General Staff, who is at present interned in the camp at Dachau. I propose that we interrogate this witness and confront him with the witness Schreiber.

I assume that this officer is the same colonel who presided over the secret session mentioned by the witness Schreiber. The witness is at Dachau. He could appear before this court tomorrow. My interrogation would take, at the most, 20 minutes. I consider the bringing of this proof to be absolutely essential in the interests of truth. I have submitted my application to the Tribunal in writing.

THE PRESIDENT (Lord Justice Sir Geoffrey Lawrence): The Tribunal will consider your application. Perhaps the Tribunal ought to hear if the Prosecution have anything to say in answer to the application made by Dr. Laternser. The Tribunal would also like to see the report and the letter to which Dr. Laternser referred.

SIR DAVID MAXWELL-FYFE (Deputy Chief Prosecutor for the United Kingdom): If My Lord will just allow me a moment until I see Colonel Smirnov.

THE PRESIDENT: Certainly.

DR. LATERNSER: Mr. President, the letter is from General Warlimont, who is at present in Nuremberg. He wrote this letter on 23 August here in Nuremberg and I received it yesterday. I found it on my table after I came down from the session. I put it in my briefcase without reading it and noted its contents when I arrived home yesterday.

Perhaps I might call the attention of the High Tribunal to the fact that in this letter we are told that after the publication of these bacteriological projects over the radio, this Colonel Bürker, whom I have just asked as a witness, came to Warlimont, who was still at Dachau at the time, and told him those facts which I have presented now.

Meanwhile General Warlimont was transferred to Nuremberg a few days ago. These are the details connected with this point.

THE PRESIDENT: Whose report is it?

DR. LATERNSER: I was referring, Mr. President, to this letter in which . . . by General Warlimont, in which the General informs me of the statements which Colonel Bürker made face to face to him a few days ago in the camp at Dachau. These statements are bracketed and I shall be very happy to submit this letter to the High Tribunal.

SIR DAVID MAXWELL-FYFE: There are two points that occur to me.

First, if Dr. Laternser would let us see the letter, it might be possible to shorten the matter in that way, to make some admission as to the statement in the letter. Otherwise, it might be convenient to see an affidavit from the officer and know what he was going to say before we occupy the time by having him examined. If Dr. Laternser would agree to the Prosecution's having the letter translated and examined, we should be able to make a communication to him and, if necessary, to the Tribunal, in the course of the day.

THE PRESIDENT: That seems a convenient course, particularly in view of the fact that the Tribunal expect to finish the entire hearing of the case this week, certainly by Saturday evening, and it will be, therefore, very difficult to get an affidavit by this Colonel Bürker before that time. Therefore, if the Prosecution are able to agree that Colonel Bürker would give that evidence, that probably would be the best way of dealing with the matter.

SIR DAVID MAXWELL-FYFE: If Your Lordship pleases; then if Dr. Laternser would allow us to have the letter, we will have it translated and looked into in the course of the day.

THE PRESIDENT: Yes.

DR. LATERNSER: Mr. President, if the witness can be called here through a request by telephone, then I can take his affidavit here or interrogate him briefly. That would be the quickest way. If I have to write to the camp first in order to get the affidavit that way, that would take more time. I assume that the telephone connection is such that we can still call Dachau today to have the witness brought here, and then we can discuss how this evidence will be presented.

THE PRESIDENT: We will see first what the Prosecution say after they have seen the letter.

COLONEL Y. V. POKROVSKY (Deputy Chief Prosecutor for the U.S.S.R.): My Lord, I would like to report that I tried to arrange for the possibility of confronting the witness of Dr. Laternser with Schreiber, but this possibility, unfortunately, has been excluded because Schreiber has been sent back to the prisoner-of-war camp. Thus it is impossible to confront the two witnesses because Dr. Laternser presented his request too late. The Soviet Prosecution does not think that it would be advisable to call the witness requested by Dr. Laternser, especially since the witness requested by Dr. Laternser does not, as far as I know, refute the fact itself that there was a secret session of the OKW, which, in my opinion, is the most important fact in that case. That is all that I wanted to report to the Tribunal on the part of the Soviet Prosecution.

THE PRESIDENT: The Tribunal will await the communication from the Prosecution and they will consider the matter.

Dr. Gawlik.

DR. HANS GAWLIK (Counsel for the SD): May it please the High Tribunal: Yesterday I paused at the question whether it would be possible at all to determine those prerequisites which are necessary in order to declare an organization criminal. I shall continue.

My statements made hitherto should lead to the conclusion that the evidence of guilt cannot be summarily determined by drawing conclusions from the number of crimes and the type of crime committed, from the knowledge of all the members of these deeds, and from their consciousness of their illegality. It is, on the contrary, necessary that proof of the knowledge and consciousness of illegality should only be considered in special proceedings in the case of each individual member of the organizations; since everything depends on the circumstances, the individual members must be given the opportunity to reply to them. Even if the members might have had knowledge of the real facts of individual criminal acts, that does not prove that they also knew that their organizations were involved therein.

Now I shall turn to the next section.

A condemnation of the organizations is furthermore in opposition with the principle of penal law: *nulla poena sine lege.* This principle has already been treated in detail by the defense counsel of the principal defendants. I shall not repeat these statements, but only point out briefly the following points of view.

In his Opening Statement, on 20 November 1945, the American Chief Prosecutor said that the defendants could not invoke this principle because they had themselves transgressed it. This argument in no way concerns the members of the organizations, because the members had no influence on the legislation but were themselves objects of the legislation.

The Prosecutor of the Union of Socialist Soviet Republics pointed out, in the discussion of this principle in his final speech on 29 July 1946, that the Charter of the International Military Tribunal was an inviolable law and absolutely had to be carried out.

The Charter is, however, in no way violated and will also be carried out if the Tribunal considers the principle *nulla poena sine lege* and does not condemn the organization, for Article 9 of the Charter is merely an optional regulation. The Chief Prosecutor of the Union of Socialist Soviet Republics further asserted that the Charter represents principles which are contained in a succession of international agreements and in the legislation of all civilized peoples. International agreements and laws of civilized peoples only show that punishable offenses must be judged in individual proceedings. The principle of collective judgment of groups of persons was up to now unknown in international law. On the contrary it is denied, as I said before, by the theory of international law.

Until the first World War it was the custom to include in peace treaties amnesty clauses for war crimes committed. After the first World War the general principle developed that individual members of fighting forces might personally be made responsible after the war for violations of the laws of war. I refer to Fenwick in *International Law,* 1924, Page 578.

The declaration of the chiefs of state of the United States of America, Great Britain, and the Union of Socialist Soviet Republics of 2 November 1943, mentioned by the Prosecutor of the Socialist Soviet Republics, orders expressly that individuals shall be made responsible. This declaration contains no statement to the effect that the collective condemnation of groups of persons is permissible.

Article 9 of the Charter is therefore not the expression of an internationally recognized legal maxim. This clause on the contrary creates a new law and cannot be made applicable with retroactive force, for instance for the time since 1921, as proposed by the Chief

Prosecutor of the United States, or even for the time from 1933 on, as proposed by the Prosecutor of the Union of the Socialist Soviet Republics in his final speech on 29 July 1946.

The condemnation of the organizations is therefore in opposition to the principle *nulla poena sine lege.*

In the second section of Part I, I come to the discussion of the questions of procedure resulting from Article 9 of the Charter. In legal procedure, according to Article 9 of the Charter, an organization or group may be said to be criminal (a) In the trial against a member of such organization or group, and (b) in connection with any action by reason of which the accused is condemned.

Both these hypotheses must be realized. Of the principal defendants, only the Defendant Kaltenbrunner, Chief of the Security Police and SD, is involved as member of the SD.

It can be gathered from the words, "in connection with any action by reason of which the accused is sentenced," that every action of the member of the organization or group is sufficient to declare the organization or group as criminal. This, however, cannot be the meaning and purpose of this definition, as I should like to illustrate by the law of the United States of 28 June 1940, already quoted.

When persons belonging to one of the associations mentioned in the act of 28 June 1940 are arraigned before a tribunal in several different proceedings, an admittedly extensive examination of evidence, though doubtful in its results, must be effected in each proceeding to determine whether the association to which the person belongs fulfills the primary conditions contained in the above legal stipulations. Then it could happen that in one trial it is established that the organization had pursued the purpose named in the law of 28 June 1940, while in other trials the result of the testimony is not considered sufficient.

In order to avoid these difficulties it could be decreed by a provision of the law that the trial be held against one or several members of the organization, while the other members who have not yet been accused are given the possibility of a legal hearing, and if a member is condemned on account of his membership in an organization within the meaning of the decree of 28 June 1940, the Tribunal makes the declaration, to take effect for all members of the organization, that the organization fulfills the purpose mentioned in the decree of 28 June 1940.

Such provisions would achieve the following: (1) the testimony on the aims, tasks, and activities of the organization would be taken only once, and (2) contradictory decisions on the objective tasks, aims, and activities of the organization would be avoided.

This purpose is apparently also the intention of Article 9 of the Charter. The situation is to be avoided whereby the military tribunals in the individual occupation zones, in the proceedings against the members of the accused organizations, would have to examine the question of the character of the organization each time by lengthy examination of evidence and perhaps come to contradictory decisions. To be sure, it would . . .

THE PRESIDENT: Dr. Gawlik, are you arguing that if any individual were tried under this act of June 1940, that the declaration of this Court under Article 9 would have any effect in the Trial under that act of June 1940? Is that your argument?

DR. GAWLIK: No, Your Lordship. I wanted to explain the stipulation laid down in Article 9 in line with the law of June 1940. The law of June 1940 is something quite different and has no connection with Article 9. I wanted to explain in connection with the law of June 1940, which was mentioned by the American Chief Prosecutor, what importance a stipulation would have such as is set down in Article 9.

THE PRESIDENT: What importance are you suggesting it would have?

DR. GAWLIK: Article 9, as I shall set forth, has the following significance:

One member must be accused because of his membership in an organization, an organization which pursues crimes according to Article 6 of this Charter. Then, in this trial against one member, all the facts must be cited against this member because of his membership in the organization, and then the facts that have been ascertained, about the aims, tasks, and activities of the organization, if a conviction is obtained, can be used in the trials against the other members; but only the objective facts, not the guilt, for guilt is an individual matter.

Your Lordship, may I cite an explanatory example. Here one member of the SD would have to be selected and this member would have to be accused, as I shall set forth, because the SD was part of an organization which permitted crimes against the peace, the laws of war, and against humanity. Now, if this member is punished because of his membership in an organization of that nature, you are objectively determining that the SD is an organization of that kind, therefore the objective findings concerning the aims, tasks, and activities of the SD can be used in the proceedings against the other members.

THE PRESIDENT: Well, I think I follow that argument, based upon the first paragraph of Article 9, is that right? It is based upon your construction or interpretation of the first paragraph of Article 9?

DR. GAWLIK: Yes.

THE PRESIDENT: Are you saying that a decision of this Tribunal upon that would have any importance of effect upon a trial under the act of 1940?

DR. GAWLIK: No, that is only an example.

MR. FRANCIS BIDDLE (Member of the Tribunal for the United States): The law of 1940 is the Sedition Law, is it not? That is the Sedition Law of 1940?

DR. GAWLIK: Yes.

MR. BIDDLE: You say the Prosecution in their argument depended on that act to show that this type of group condemnation was used in other countries—they made that analogy?

DR. GAWLIK: Yes, I know...

MR. BIDDLE: Yes, you say that is not a true analogy.

DR. GAWLIK: Yes.

MR. BIDDLE: And the reason you say that is that if one individual were tried under the act of 1940—do you follow?

DR. GAWLIK: Yes.

MR. BIDDLE: First it would be necessary to show that he belonged to an organization of which the purpose was to overthrow the Government by force or violence, right?

DR. GAWLIK: Yes.

MR. BIDDLE: Now, the court then would have to decide first the purposes of the organization, right?

DR. GAWLIK: Yes.

MR. BIDDLE: Now, you say also that, if a second individual were, at a later time, tried under that act, the Government would again have to prove...

DR. GAWLIK: Yes.

MR. BIDDLE: ...that the purpose of the organization was to overthrow the Government by force or violence, right?

DR. GAWLIK: Yes.

MR. BIDDLE: And therefore, that the analogy is not true because the finding as to the organization in the first trial against the first individual would have no effect...

DR. GAWLIK: Yes.

MR. BIDDLE: ...on the second trial against the second individual, and that that principle is inherent in all Anglo-Saxon law because the finding of a fact against one individual cannot affect the trial against the second individual, is that your argument?

DR. GAWLIK: Yes. Certainly it would be sufficient for this purpose if the legal effect went only as far as the objective determination of the tasks, aims, and activities of the organization, and the determination of guilt were left to the subsequent proceedings.

With regard to Law Number 10, as was pointed out already, the condemnation of the organizations according to Article 9 of the Charter contains not only the objective statement of the aims, tasks, and activities of the organizations, but beyond this purpose the confirmation of the guilt of the members. Consequently, Article 9 of the Charter, besides the legal material confirmation of objective and subjective factual evidence, also has a legal criminal meaning.

This juridical aim, which is evidently pursued by Article 9 of the Charter, can, however, only be attained if this decision is so interpreted that the member is sentenced on account of membership in an organization whose aims or expedients are punishable according to Article 6 of the Charter, and not on account of any action. Any other interpretation would have no meaning and no purpose.

Only a conviction of the Defendant Kaltenbrunner on account of membership in such an organization could, therefore, according to Article 9 of the Charter, justify the condemnation of the SD.

In consideration of these statements the formal hypotheses for the application of Article 9 of the Charter do not appear appropriate to me. It would be necessary for the Defendant Kaltenbrunner to have been charged on account of his membership in the SD as a criminal organization within the meaning of the Charter, and for the character of the SD to have been examined in this proceeding against the Defendant Kaltenbrunner. Only then would there be a case at hand—as the Chief Prosecutor for the United States has stated—on the basis of which the criminality of the SD could be examined. Such a charge has, however, not been made against the Defendant Kaltenbrunner. The Defendant Kaltenbrunner has not been accused of belonging to the SD as a criminal organization, but is to be sentenced for other punishable offenses.

Therefore, taking the statement of the American Prosecutor as a basis, it must be considered as inadmissible that for the proof of the criminality of the SD evidence has been produced which has no connection with the criminal actions with which the Defendant Kaltenbrunner has been charged.

Finally, it will have to be examined what connection exists between the period during which the accused member belonged to the organization and the period for which the organization is to be declared criminal. This purely legal question is completely different from the question of the period during which an organization was criminally active. Here we are only concerned with this question:

can, in the proceedings against a defendant, the organization of which he was a member be declared criminal also for the period during which he did not belong to the organization?

According to the statements made by the American Prosecutor, the criminality of the organization is to be examined only on the strength of the defendant's action: Any action of the defendant limits the examination as to whether the organization can be declared criminal also in regard to time. The evidence in the proceedings against an accused member can only justify any decision regarding the organization for the period during which the defendant belonged to the organization.

This limit in time is justified for another reason: Whoever is to be sentenced has the right to be heard. This right to be heard is not met by the making of statements before the court, but includes the right to participate in the whole proceedings. According to Article 9 of the Charter, this right to participate in the entire proceedings is obviously not to be annulled, but only restricted to a single person of the organization mentioned, in order to save time, on the principle that the depositions of further members as to the aims and tasks and activities of the organization would be cumulative. A member who did not belong to the organization during the whole period for which the organization is to be declared criminal, can define his attitude toward the question of the aims, tasks, and activities of the organization only for the duration of his membership. According to the principle of legal hearing it is, therefore, necessary that such a member should participate in the proceedings as a defendant, who was a member of the organization during the whole period for which the organization is to be declared criminal.

For these judicial reasons the organization can equally be declared criminal only for the period during which the defendant was a member of it. Should an organization be declared criminal for the entire duration of its existence, then a member must be indicted who belonged to it during the whole period. For judicial reasons the SD, therefore, could be declared criminal only for the period during which the Defendant Kaltenbrunner was Chief of the Sipo and the SD, that is, since January 1943. The crimes with which Ämter III and VI are charged must, therefore, have been committed during this period.

I now come to the real evaluation of the facts based upon the results of the evidence. This is my second main part, and first of all I shall deal with general statements.

The Prosecution has submitted a large number of documents in which the SD is mentioned, thus wishing to prove that the Ämter III and VI were those responsible for them. However, the Prosecution itself has said that in common usage, and even in orders and decrees,

"SD" was used as an abbreviation for "Sipo and SD." I refer to the trial brief against the Gestapo and SD, Page 19 of the German text, and to the session of 3 January 1946. Even according to the Prosecution, a document mentioning the SD is no proof that this deed must have been committed by members of Ämter III and VI. These may just as well be deeds of the Sipo. That has been proved by the evidence.

The witness Von Manstein, one of the highest military leaders of the former German Wehrmacht, was heard before the Tribunal. This witness spoke repeatedly of the SD in his hearings before the Tribunal and the Commission. When I asked the witness what he understood by SD, he declared that he was not quite certain. My further question whether he believed this to mean Ämter III and VI he answered in the negative (Session of 10 August 1946).

The shooting of a Commando in the north of Norway was mentioned in the examination of the Defendant Jodl on the witness stand. The Defendant Jodl was told that the prisoners had been shot by the SD. Thereupon the Defendant Jodl declared, and I refer to the record and quote (Session of 6 June): "Not by the SD; that is not correct, but by the Security Police."

I furthermore draw your attention to the affidavit of the Defendant Keitel—SD-52—who declared under oath that he only realized during the Trial at Nuremberg that the opinion frequently prevailing also in military circles concerning the tasks and competence of the SD as an executive police organ was not correct. Therefore in military language and decrees the SD was often mentioned when the competent police organ with executive power was meant. Keitel declared further that concerning the competencies of the SD an erroneous conception had existed which had led to the wrong interpretation of the abbreviation "SD."

In this connection I also refer to the affidavit of the former Chief of the General Staff of the Luftwaffe, Koller (Document Number Jodl-58, Pages 179 and following, in Document Book Jodl). In this affidavit Koller reports upon a situation conference with Hitler. At this conference Hitler gave the order to turn over all bomber crews of the various Allied forces to the SD and to liquidate them through the SD. Then Koller describes a conversation he had with Kaltenbrunner after this conference. According to Koller, Kaltenbrunner made the following statement during this conversation: "The Führer's conceptions are quite erroneous. The tasks, too, of the SD are constantly being misinterpreted. Such things are no concern of the SD."

The French Prosecution has submitted a great number of documents in which the SD is mentioned. I have shown these documents to the witness Knochen, who was examined before the Commission.

Knochen was the Commander of the Security Police and the SD in France. In connection with these documents he said that there had been a confusion in terminology, and that SD should be interpreted as "Field Police." To my question: "What does turning over to the SD mean?" the witness Knochen answered, and I quote: "that means transfer to the Executive Section IV of the Security Police."

I showed the witness Dr. Hoffmann Document 526-PS before the Commission. Hoffmann was an official of the Security Police and never belonged to the SD. Document 526-PS concerns the carrying out of a Commando order in a Norwegian fjord. This report states: "Führer Order carried out by SD." To my question to the witness Hoffmann, what was to be understood by SD, he answered literally: "Since this seems to be an executive measure, SD must here be interpreted as Security Police; the Wehrmacht often mixed up the two ideas."

The Prosecution has furthermore submitted Document Number 1475-PS. This is a report of the commander of the prison at Minsk, dated 31 May 1943, in which he reports that Jews had been brought into the prison by the SD, through Hauptscharführer Rübe, and that the gold bridges, fillings, and crowns had been removed from their teeth. In this connection I have submitted Affidavit Number SD-69 of Gerty Breiter, a stenographer employed with the Commander of the Security Police and the SD in Minsk. Gerty Breiter states that Rübe was an official of the Gestapo, and that the SD in Minsk had nothing to do with Jewish affairs. The sole activity of the SD in Minsk was to make reports upon the general attitude and opinions of the public. There were no SD prisons in Minsk.

This confusion in terminology is apparently due to the fact that the members of the SS special formation "SD" which, as I said in the introduction, was something entirely different from the SD Intelligence Service, wore the SS uniform with the SD insignia.

In the territories occupied by Germany, all members of the RSHA, including all members of the Stapo and Kripo, even those who were not members of the SS or SS candidates, wore the SS uniform with the SD insignia. Thus every member of the Sipo was characterized as an SD man, and measures carried out by the Security Police were considered to be SD measures. I refer in particular to the Commission record and to the Court record (Session of 1 August 1946).

THE PRESIDENT: Did you say then that all members of the SS, including the Kripo and the Sipo, when they were working in the East were in the uniform of the SS with an SD badge on them?

DR. GAWLIK: Yes. The witness has given this in evidence, Your Lordship.

THE PRESIDENT: Go on.

DR. GAWLIK: In this connection I would point out that about 90 percent of all members of Ämter III and VI were unpaid, and only a small part of them belonged to the SS or were SS candidates (Affidavit Number SD-32). During the war a large number of the members of the SD, Ämter III and VI, were women. These persons were not entitled to wear the uniform of the SS formation SD.

According to the subdivisions of the trial brief against the Gestapo and the SD, I shall discuss:

a. The charge of Conspiracy

b. Crimes against Peace

c. War Crimes

d. Crimes against Humanity.

I shall now refer to the conspiracy charges. I still do not have Evidence III of the English trial brief against the Gestapo and SD.

Ämter III and VI are accused of having participated in a conspiracy to commit crimes against peace, war crimes, and crimes against humanity. There are three possibilities for an organization to be in contact with a circle of conspirators:

I. The organization can belong to the circle of conspirators. This presumes that all the members of the organization participated in the agreement or the secret plan to commit illegal actions or to carry out legal actions by illegal means.

It must therefore be proved (a) that such a plan existed, and (b) that all members adopted this plan as their own (Archbold: *Pleading, Evidence, Practice,* Page 1426).

Second possibility: Organizations can have the aim and the purpose of supporting participants in a conspiracy. For this is required: (a) A secret plan or an agreement; (b) the organization must objectively have pursued the aim of aiding one or more of the participants in the execution of the plan; (c) all members must have known of it and desired it.

Third possibility: The organization can be used objectively by conspirators to carry out the secret plan without the members realizing it.

In this case there can be no question of punishable participation of the organization, because the characteristic of factual culpability is lacking. The organization is merely an unpunishable tool and cannot be declared criminal.

On Case I the Prosecution has submitted that not all participated in the conspiracy, though all contributed to the offenses (Session of 20 December 1945). This indicates that the Prosecution does not want to contend that the organizations were participants in the conspiracy. I shall therefore not deal further with this question.

The punishable support of a conspiracy, Case II, also requires (a) the existence of a secret plan, (b) knowledge on the part of the members.

Therefore the existence of a secret plan and the members' knowledge thereof must also be proved.

Hitherto it has in no way been shown that such a plan for the commission of crimes against peace, war crimes, and crimes against humanity actually existed.

This has already been presented in detail by counsel for the principal defendants and I do not want to repeat these statements, but I should like briefly to point out the following:

A conspiracy cannot be considered proved until evidence is brought as to: time, place, persons among whom this common agreement was reached, and nature of the contents.

Even if such a plan should have existed, it has in no way been shown that it was known to members of the SD, and that therefore they had in mind the purpose of supporting such a conspiracy with their activity. The Prosecution has derived the fact that such a conspiracy existed in particular from facts mentioned in the so-called key documents. The facts mentioned in these documents were, however, kept strictly secret and were known only to the persons immediately concerned with them. Members of the organizations which participated had no knowledge of these things; this can be assumed as being known to the Court.

If the fact of a secret plan for the commission of crimes against peace, war crimes, and crimes against humanity arises from the key documents, the members of the SD did not know this, and therefore did not have the intention of supporting such a circle of conspirators with their activity.

The facts which the Prosecution produced to prove that members of the SD knew of a conspiracy cannot be regarded as "violent" assumptions, nor as "probable" assumptions, but at most as "light" or "rash" assumptions which are without significance (Archbold: *Pleading, Evidence, Practice,* 1938, Pages 404, 405).

Furthermore, I believe that the examination of witnesses and the affidavits has brought proof that members of the SD had no knowledge that a secret plan for the commission of crimes against peace, war crimes, and crimes against humanity existed and that, therefore, there was no intention in the SD to support such a circle of conspirators with their activity.

It is, thus, impossible to pass sentence on the SD for participation in a conspiracy, because proof is lacking that (a) a circle of conspirators did in fact exist, and (b) the members of the SD had knowledge of this fact and intended to afford assistance to such a circle of conspirators by their activities.

Therefore, in this Trial before the International Military Tribunal it does not matter whether the SD supported the SS, the Gestapo, the Party, or individual persons of the State leadership, unless the Prosecution has brought proof of the prerequisites which I have indicated: (a) existence of a secret plan for the commission of crimes according to Article 6, and (b) knowledge on the part of the members of the SD.

Furthermore, the factual submission of the Prosecution concerning the co-operation of the SD with the SS, the Gestapo, or other persons, requires correction.

I have already explained that the SD did not form part of the SS, but that the Domestic Intelligence Service and the Foreign Intelligence Service were independent organizations. The question arises whether the independent organization of the SD aided the independent organization of the SS in pursuing its aims and tasks.

The Prosecution have claimed that this was the case. In refutation of this I wish to draw attention to the testimony of the witness Hoeppner and to the affidavit (Number SD-27) by Albert, who have stated that the SD could be considered an SS Intelligence Service only until the beginning of the year 1934, but that this task had been discontinued as from that date, so that the SD became the general intelligence center for the State and the Party. These facts have been corroborated both by the witnesses Ohlendorf and Hoeppner and by the SS witnesses Pohl, Hausser, and Reinecke.

As regards the position of the SD in relation to the Police, the Prosecution have maintained that the SD formed part of a uniform police system and that the two sections had been merged into a powerful, politically centralized police system (Session of 19 December 1945). Specifically, the SD did not become part of the Police or of a police system either by the appointment of Himmler as Deputy Chief of the Gestapo in Prussia, or the appointment of Heydrich as Chief of the Security Police and the SD in June 1936, or by the institution of the Reich Security Main Office (RSHA) in September 1939. I refer to the statements of the witnesses Hoeppner, Rössner, Wisliceny, and Best in connection with this subject. In refutation of the Prosecution's claim it must be established that the SD never formed part of the Police (Affidavits SD-2, 27, 28, 33, 34, 35, 61, 63), nor did the SD ever have to undertake police work in any sphere of life (Statement by Hoeppner, SD-2, 18, 63).

As to organization, the position of the SD with regard to the Security Police within the Reich was different from that in the occupied territories. I refer to the Headquarters Manual of the United Nations, which I submitted as Document Number SD-70, where the organization of Ämter III and VI is correctly given, and also to the testimonies of the witnesses Best, K. H. Hoffmann, Hoeppner, Dr. Ehlich, Dr. Knochen, Straub and Affidavits Numbers SD-25 and 26.

They all show that within the Reich the agencies of the SD, Ämter III and VI, were always independent with regard to the Security Police. No connection between the SD and the Security Police was formed either by the Higher SS and Police Leaders or by the inspectors of the Security Police and the SD. The latter enjoyed personal privileges of inspection over the agencies of the Security Police and those of the SD, and therefore they did have knowledge of some of the ordinances relating to any one of the agencies under their control. However, it is not permissible to conclude, from the simple fact that they issued or received some decree, that such decree was necessarily within the competence of the SD. The point is rather, as with all decrees of the Chief, the inspectors, and the commanders of the Security Police and the SD, whether they were dealt with by Ämter III and VI. This can be ascertained from the reference numbers. Only those decrees showing the reference numbers III and VI came within the scope of the Domestic Intelligence Service or the Foreign Intelligence Service and might be charged to the SD. As regards the Higher SS and Police Leaders I wish to refer to Affidavit Number SD-34, for the inspectors of the Security Police and the SD to Affidavit Number SD-35 and the testimony of Hoeppner.

In the territories occupied by Germany the Security Police and the SD for purposes of organization were united under the commanders of the Security Police and the SD. The Domestic Intelligence Service was dealt with by Department III, the Foreign Intelligence Service by Department VI, while Department IV was the Gestapo and Department V the Criminal Police. Thus, one cannot speak of a uniform organization of Ämter III and VI in the Reich and abroad. The Domestic Intelligence Service in Germany, the Foreign Intelligence Service in Germany, and the activities of the Stapo, the Criminal Police, and the SD in the occupied territories, united for organizational purposes under the commanders of the Security Police and the SD, represented different organizations. It must be noted that, as to their tasks, the independence of Ämter III and VI in foreign countries was ensured (Affidavit SD-56).

Special reference must be made to the relationship between the SD and the Gestapo. The Prosecution have suggested that the Gestapo was the executive organ, while the SD attended to espionage (Session of 19 December 1945). This description of the relationship between the Gestapo and the SD is not correct. Actually, it is hardly possible to define clearly the relationship between the Gestapo and the SD for the entire period from 1931 until 1945. It varied according to time and place. As regards the period before 1934, I have already shown that presumably there were no relations between the Gestapo and the SD, since at that time the SD was the intelligence service of the SS. The decree of 1938, defining the functions of the two bodies, whereby the Gestapo was entrusted both with combating and detecting enemy activities, must have been of primary importance. As far as the SD Hauptamt was concerned, this concluded the activities of its former Central Department II/1, which had dealt with enemy detection, in contrast to Central Department II/2, which provided an analysis of the domestic scene. The Central Department II/1 of the SD Hauptamt was accordingly dissolved (Affidavit SD-27). The Amt III of the RSHA, which is indicted here, was the former Central Department II/2, dealing with the analysis of the domestic scene (Affidavit SD-27). The activity of Central Department II/1, consisting of enemy detection, cannot be charged to Amt III. The tasks and aims of Central Department II/1 were completely different from those of Amt III, and the former never was part of the latter; nor can it be regarded as the predecessor of Amt III, which had been the Department II/2 of the SD Hauptamt. The contradictory statements of witnesses as to the co-operation between the SD and the Gestapo can undoubtedly be traced to this evolution of the SD and the change in the tasks allotted to it. Actually, co-operation between Amt III, which had developed out of Central Department II/2, and the Gestapo was never any closer or more extensive than in the case of other authorities. However, the Central Department II/1 had never been an intelligence center for the Gestapo either, but operated entirely independently of that institution (Affidavits SD-16, to 19, 27, 55). Dr. Best, a witness for the Gestapo, has perhaps provided the best characterization of the relationship by stating that in those years experiments were continually being made with the SD. In trying to prove the close co-operation existing between the Stapo and the SD the Prosecution have mainly based their accusation on the book by Dr. Werner Best, Die Deutsche Polizei (Document Number PS-1852). In testifying, the author has explained that this was a private piece of work devoid of any official character; Best also stated that he had simply described a development with an eye to the future.

The Prosecution have also referred to Documents 1956-PS, Das Archiv, and 1680-PS, the article, 10 Jahre Sipo und SD, and also to a statement by Heydrich on occasion of the Day of the German Police. The Prosecution have further mentioned Document 1638-PS, the decree of the Reich Minister of the Interior, dated 11 November 1938, on the co-operation of all offices of general and interior administration with the SD. In refutation of the interpretation of this decree, as given by the Prosecution, I wish to refer to the testimony of the witnesses Best and Hoeppner, and to Affidavit Number SD-36. With regard to the testimony of the witnesses Albath, Oldach, and Hülf I refer to Affidavit Number SD-71 by Schräpel, to Affidavit Number SD-36, Figure 4c, and to Number SD-28. In establishing the relationship between the Stapo and the SD I refer to the testimony of Ehlich, Rössner, and Hoeppner, and to Affidavit Number SD-70, Section 6. In connection with Exhibit Number RF-1540 I refer to the testimony of the witness Rössner.

In substantiation of the fact that it may very well be correct that witnesses before the Tribunal, the Commission, or in their affidavits stated that the task of

the SD had not consisted in supplying the Gestapo with material leading to the persecution of political enemies, I am submitting two instances of evidence by persons who have not the slightest cause to give protection to the SD. The first concerns the affidavit given by Dr. Ritter, the well-known professor of modern history at the University of Freiburg. Dr. Ritter is an enemy of National Socialism and has never been a member of the Party or any of its organizations. He belonged to the Goerdeler circle, and was to have been Minister of Culture in a cabinet to be formed by Goerdeler following 20 July 1944. Dr. Ritter's lectures were regularly recorded by the SD, Amt III. However, it is obvious from his affidavit that the SD failed to turn over the material collected against him to the Gestapo, although he was known to be an enemy of the regime. When Dr. Ritter was arrested in connection with 20 July 1944 his statements before the Gestapo could have been refuted by the material in the possession of Amt III, which however was not done.

Document Number SD-71, which I have also submitted, is a letter referring to the Prosecution Document R-142, which has repeatedly been mentioned during these proceedings. This is a letter by the local SD office in Kochem stating that the plebiscite of 10 April 1938 in Simmern had been checked and that it had been found that a clergyman, Wolferts, had voted "No." Wolferts has died in the meantime, but from a letter by his daughter it has been established that neither the SD nor the Gestapo took any steps against Wolferts on the grounds of his vote.

Such activities of the SD, therefore, were not intended to provide the Gestapo with material leading to the persecution of political enemies. In connection with this document I also refer to the testimony of the witnesses Hoeppner and Rössner. At the same time I wish to draw attention to the fact that it was the task of the SD to co-operate with all authorities, as can be seen from Documents Number SD-3 to 8, which I have submitted.

On the subject of the relationship between the SD and the Party the witness Hoeppner has spoken at considerable length. It is true that the SD was to keep the Party informed; a direct connection between the Party and the SD, however, has never existed (Document SD-15a, Affidavit SD-27). This has been established not only by the testimony of witnesses for the SD, but also from the statements of the witnesses interrogated on behalf of the Party; I refer to the testimony of Kühl, Von Roedern, Biedermann, Schneider, Lauterbacher, Hirt, and Wolf.

The witness Meyer-Wendeborn testified that the SD had developed on its own and had never received instructions. I also refer to the testimony of the witness Kaufmann, who was Gauleiter in Hamburg and stated that he was familiar with everything that occurred in his Gau with the exception of the activities of the Stapo and the SD.

In support of their claim that the SD had secretly marked ballot slips in order to be able to identify persons voting in the negative or turning in invalid ballot slips in a plebiscite, the Prosecution have put in another document emanating from the local SD office at Erfurt and dated May 1938 (Document GB-541). I would point to the fact that it was a local and therefore subordinate office, and by analogous reference to my Document Number SD-69 it may equally be assumed that nothing at all was undertaken with regard to persons voting in the negative. This, after all, is the essential criterion. These two documents are certainly not sufficient to provide proof for the fact that in general the SD was allotted the task of keeping a check on the plebiscites with a view to eliminating enemies of a conspiracy. As counter-evidence showing that these activities on the part of the local SD offices at Erfurt and Kochem were completely removed from the normal activity of the SD, I wish to refer to the Affidavit Number SD-27 by Albert, who was employed in the central office in Berlin. Albert has stated that the central office in Berlin never issued any instructions to affix secret markings to ballot slips in elections or plebiscites. As a matter of fact, there is no connection between the documents from Erfurt and Kochem. Erfurt calls for a report on probable negative voters before the election. Kochem reports after the election that persons belonging to the election committee in one small village of the area had marked ballot slips. This election committee had nothing to do with the local SD office.

I also refer to the 196 affidavits for the entire territory of the Reich, which I have compiled in a list, and where it is stated that it was not the task of the SD to mark ballot slips or undertake similar action in order to detect negative voters. Such instructions or orders were never issued by the central office.

The Prosecution have also suggested that the SD had exercised direct influence on the choice of Nazi leaders, and have submitted the affidavit by Dr. Hoettl (Document 2614-PS) in substantiation of their claim. In my supplementary affidavit, Number SD-27, Hoettl has declared that the SD did not exercise any direct influence on the choice of Nazi leaders, and I also refer to Affidavits Numbers SD-4 to 10, 39, 61, and 63, and to the affidavits compiled in the collective list, Number SD-70.

The Prosecution have furthermore alleged that the SD had checked the loyalty and reliability of civil servants. Here I refer to the testimony of the witnesses Hoengen and Rössner, and to Affidavits Numbers SD-3, 7, 8, 9, 61, 63, and Document Number SD-14, as well as to the affidavits compiled in the collective list, Number SD-70.

Concerning the aims, purposes, and methods of the indicted Amt III, I should like to refer to statements made in Document SD-70, the handbook of the Supreme Headquarters of the United Nations of April 1945. There it says:

> "The SD maintained for its purposes a network of newsmen throughout all fields of life in Germany"—some words are missing—"who were recruited from all social strata and professions. The information gained through the newsmen was used in the situation reports....
>
> "These reports are exceptionally frank and contain a complete and uncolored picture of the mood and attitude in Germany...."

The correctness of this is proven by the 649 affidavits submitted in my summary and made by former full-time and honorary workers and Vertrauensmänner (persons entrusted with special tasks) for the total area of the Reich and for parts of the Reich.

The aims, purposes, and activities of Amt VI are shown by Affidavits SD-61, 62, and 66, also by Document SD-1.

In regard to Amt VI I refer particularly to Affidavit SD-66.

I shall now turn to Section B: Crimes against Peace (Statement of Evidence V of the English trial brief against the Gestapo and SD).

As a crime against peace the SD is accused of having staged so-called border incidents before the outbreak of the war to give Hitler an excuse for starting the war. The Prosecution, however, referred to only one border incident in which the SD is alleged to have participated. That is the alleged attack on the Gleiwitz radio station.

In this connection the Prosecution made reference to the affidavit of Alfred Naujocks of 20 November 1945. This is Prosecution Document 2751-PS. The deponent of Document 2751-PS, Alfred Naujocks, was heard before the Commission. On that occasion he declared that the execution of the attack on the Gleiwitz radio station was not included in the aims and purposes of Ämter III and VI.

The witness further testified that no sections of Ämter III and VI were used for the execution of that border incident in Gleiwitz and

that the men who with him attacked the Gleiwitz station did not belong to the SD, Amt III.

The witness also stated that by the term "SD men" in his affidavit of 20 November 1945 he did not mean the members of any definite office of the RSHA; but common usage of the term "SD men" referred to RSHA members of all offices which were subordinate to Heydrich.

The witness further stated that he was charged with the execution of the border incident at Gleiwitz, not because he belonged to Amt VI and worked there, but that exclusively personal reasons were responsible for that decision. The witness testified that on the basis of the conversation he had had with Heydrich he had gained the impression that Heydrich would have given him that assignment even if he had not been a member of Amt VI and the SS. The order for the execution of this assignment reached the witness Naujocks not through the official channels of the chiefs of Ämter III or VI. The chiefs of Ämter III and VI had no knowledge of this action.

The members of the SD, Amt III and Amt VI, had no knowledge that the attack was carried out by Naujocks, a member of Amt VI. Particularly the members of the SD-Leitabschnitt which was in charge of Gleiwitz, and the outpost of the SD, had no knowledge of this activity and could not have had, because Naujocks had been forbidden to get in touch with any members of the SD whatsoever in that territory.

The statements of this witness have been reaffirmed by the witness Somman and through Affidavit Number SD-11, deposed by Dr. Marx.

I also submitted 215 affidavits for the office of the RSHA as well as for all territories of the SD-Leitabschnitte and the SD-Abschnitte, particularly for those situated in the regions of Katowice, Danzig, and Saxony. Those affidavits testify that the members of the SD during the critical time had no knowledge of the faked border incidents or the participation of the SD in them.

The affidavit by the witness Dr. Mildner (2479-PS) is refuted by the testimony of the witness Naujocks and Affidavit Number SD-11, Dr. Marx. This subject-matter does not provide sufficient grounds to declare the SD to have been criminal, since this would presuppose proof of the fact that the SD as an organization was employed in the aggression, and that its members had cognizance thereof.

The Prosecution have also submitted Document Number USSR-509 as proof of the fact that the SD had participated in the preparations for a solution by force of the Czechoslovakian problems. The first letter bearing the Number III 225 is a draft without reference number and date, which was signed only by the official who prepared it. His superiors failed to sign the draft and rejected it. The other letter should carry no weight as far as the organization of the SD is concerned, because no proof is forthcoming to show that such activities were known to all members. The letter indicates that this was clearly not the case.

In the course of the session of 2 August 1946 the Prosecution have alleged that this document also contains a reference to the preparation of liquidations. As will be seen from Page 7 of the first letter this is not the case.

In order to judge whether the SD can be declared criminal on the grounds of the activities of the Einsatzgruppen, the following questions must be examined:

1. Did the Einsatzgruppen A, B, C, and D, which were assigned in the East to the army groups, belong to the organization of Ämter III, VI, and VII?

2. Were parts of these office organizations used in these Einsatzgruppen?

3. Did the Ämter III, VI, or VII give orders to the Einsatzgruppen to commit crimes against the laws of war and against humanity?

4. Did the members of the Domestic Intelligence Service (Amt III), or of the Foreign Intelligence Service (Amt VI), have any knowledge of the activities of the Einsatzgruppen, which are crimes in the sense of the Charter?

First I must rectify an error. In this Trial and before the Commission the Einsatzgruppen have repeatedly been designated as Einsatzgruppen of the SD, up to a short time ago. As an example, I refer in particular to the records of Keitel, Dr. Best, Hausser, and Von Manstein. This designation is wrong. The four Einsatzgruppen employed in the East were designated A, B, C, and D. They had under them the Einsatzkommandos, which were designated by the Numbers 1 to 12. Thus the word "SD" is mentioned neither in the designation of the Einsatzgruppen nor of the Einsatzkommandos. Furthermore, there was no reason for that since, according to the evidence submitted by the Prosecution, only 3 percent of their members were part of the SD Ämter III or VI. The members of the SD were in the eighth place, as far as membership was concerned. I refer you to the statistics found in Document L-180 submitted by the Prosecution and repeated in the record of 20 December 1945.

The designation of the Einsatzgruppen is also shown by the distribution list of Prosecution Document D-569. This shows the various relationships. The Einsatzkommandos 1-a, 1-b, 2, and 3 were under Einsatzgruppe A; Einsatzkommandos 7-a, 7-b, 8, and 9—Moscow—were under Einsatzgruppe B; 4-a, 4-b, 5, and 6 were under Einsatzgruppe C; 10-a, 10-b, 11-a, 11-b, and 12 were under Einsatzgruppe D.

The setting up of the Einsatzgruppen was not ordered by Ämter III, VI, or VII, but by Himmler on the basis of an agreement with the High Command of the Army. I refer you to the testimony of Dr. Best, Schellenberg, Ohlendorf, to Document USA-557, and Affidavits Numbers SD-41 and 46. The evidence has shown further that the Einsatzgruppen and Einsatzkommandos were not under the orders of Ämter III, VI, and VII. I refer again to Document USA-557, Affidavits SD-41, 44, and 46, to the record of 3 January

1946, to Prosecution Document L-180, Pages 2 and 3, to the record of 5 June 1946 and Document 2620-PS.

If one considers in particular the constitution of the Einsatzgruppen, which is set forth in the record of 20 December 1945, one will have to admit, as has been deposed by the witness Hoeppner and confirmed by the witness Bendt in Affidavit SD-41, that this concerns an affiliation of a special kind of persons who did not belong to the organizations of Ämter III, VI, or VII.

The evidence has further shown that no parts of the organizations of Ämter III, VI, or VII were employed in the Einsatzgruppen and Einsatzkommandos, and that the Ämter III, VI, and VII did not issue any orders for the mass destruction carried out by the Einsatzgruppen. I refer to Affidavit SD-61, Affidavit SD-41, particularly the answers to Questions Numbers 6 and 9, and to Affidavit SD-44, Numbers 4 and 5.

The Einsatzgruppen and the Einsatzkommandos are special units which deviated in their composition entirely from the structure of the Security Police and SD in the Reich itself. I refer in this connection to the statements of Ohlendorf and Hoeppner and to Affidavits SD-41 and SD-46. The witness Best testified (Record of 31 July 1946): "They were Security Police units of a special kind."

It is of decisive significance for the question whether the organization can be declared criminal that no parts of the SD, Ämter III, VI, or VII, were employed in the Einsatzgruppen, but only individual members were assigned to these Einsatzgruppen as a result of legal regulations. In this connection Hoettl's affidavit of 10 April 1946 seems especially important to me. I emphasize that this is a Prosecution document. Hoettl declared in the affidavit mentioned that the membership of the people in the SD was inactive during their affiliation with the Einsatzgruppen.

Insofar as members of Ämter III, VI, and VII were assigned by legal order to the Einsatzgruppen and Einsatzkommandos in the East, I refer for their tasks and activities to the testimony of Dr. Ehlich and Von Manstein, and to Affidavit SD-69.

The selection of the members of the Security Service for the Einsatzgruppen and Einsatzkommandos was not carried out on the basis of their position and duties in the Reich offices. For that point I refer to the testimony of Ohlendorf (Record of 3 January 1946) and Affidavits SD-41 and SD-45.

Thus I come to the conclusion:

(1) Einsatzgruppen A, B, C, and D did not belong to the Domestic Intelligence Service, Amt III, to the Foreign Intelligence Service, Amt VI, or to Amt VII.

(2) No parts of this organization were used for this purpose, but individual members were assigned to the Einsatzgruppen.

(3) The legal position of these persons was the same as, for example, that of persons who had been called up for military service. Their affiliation with Ämter III, VI, or VII was inactive. They were no longer subject to instructions from their original offices. I skip the next pages, that is, 64, 65, 66, 67; Pages 68 to 71 deal with Einsatzkommandos in prisoner-of-war camps.

THE PRESIDENT: Dr. Gawlik, the Tribunal understands that the SS, the Gestapo, and the SD all disclaim responsibility for the Einsatzgruppen. Could you tell the Tribunal who is responsible for the Einsatzgruppen?

DR. GAWLIK: The Einsatzgruppen were subordinated to—the responsibility may be seen from my statement on Page 61. I should like to refer you to the testimony of Dr. Best, Schellenberg, Ohlendorf, and to Document...

THE PRESIDENT: Dr. Gawlik, the Tribunal would like to know who you say was responsible for the Einsatzgruppen. They do not want to be referred to a crowd of documents and a crowd of witnesses. They want to know what your contention is.

DR. GAWLIK: The Einsatzgruppen, in my opinion, were organizations of a special kind which were directly under Himmler, and for the rest, the testimony of the witnesses diverges as to how far they were subordinate to the commanders-in-chief. Some of the witnesses have stated that they were subordinate to the commanders-in-chief, and some disputed this. As far as this question is concerned, I cannot define my attitude.

THE PRESIDENT: Was it possible, according to your contention, for Himmler to control these Einsatzgruppen without any organization, and if it was not, what organization controlled it?

DR. GAWLIK: The Einsatzgruppen had their own head, as may be seen from Prosecution Document L-180, the Stahlecker report. Stahlecker was the Chief of the Einsatzgruppe A, and this man probably sent this report, which was found, directly to Himmler, and from that I may assume that the heads of the Einsatzgruppen were directly under Himmler. That was a subordinate organization along with the RSHA for occupied countries. Your Lordship, may I...

THE PRESIDENT: Can you tell the Tribunal who were the individual men who composed the Einsatzgruppen? Did they consist of SS or SA or SD or the Wehrmacht?

DR. GAWLIK: Your Lordship, the composition may be seen in the record of 20 December 1945. I do not remember them exactly, Your Lordship, but I do know that they included Waffen-SS, Criminal Police, Stapo, SD...

THE PRESIDENT: You are too fast. Waffen-SS?

DR. GAWLIK: Waffen-SS, Criminal Police, Stapo, SD, and on this page, as far as I can recall, drivers are mentioned, and I believe interpreters, but I cannot say for certain. The various groups are stated exactly on this page, Your Lordship, which is Page 17...

THE PRESIDENT: I have down Waffen-SS, Criminal Police... The last one I have got here is NSKK. What did you give then?

DR. GAWLIK: No, Your Lordship, not NSKK.

THE PRESIDENT: Waffen-SS, Criminal Police...

DR. GAWLIK: Yes.

THE PRESIDENT: State Police?

DR. GAWLIK: Yes.

THE PRESIDENT: SD?

DR. GAWLIK: Yes.

THE PRESIDENT: NSKK?

DR. GAWLIK: No, drivers.

THE PRESIDENT: Well, I have crossed out NSKK.

DR. GAWLIK: Your Lordship, it is an error. The NSKK is not involved.

THE PRESIDENT: I have crossed out NSKK. Is there anything else? Any Gestapo?

DR. GAWLIK: Yes, Gestapo, of course. Your Lordship, State Police and Gestapo are identical. Interpreters are enumerated in this document. I believe—as far as I can remember—these were the main groups, but at the moment I cannot tell you for certain.

THE PRESIDENT: Thank you.

DR. GAWLIK: I beg your pardon, did Your Lordship wish to know the chiefs of the Einsatzgruppen or the members?

THE PRESIDENT: I meant the memberships.

DR. GAWLIK: Yes, that is quite correct. Your Lordship, I wanted to add that altogether there were 1,000 to 1,200 men in these four Einsatzgruppen.

THE PRESIDENT: How many did you say?

DR. GAWLIK: One thousand to approximately 1,200 men, and from the SD there were 3 percent. That may be seen from the document. It is Document L-180. The setup is shown there.

THE PRESIDENT: We will adjourn for a recess.

[A recess was taken.]

DR. GAWLIK: Your Lordship, I shall have to correct my statement regarding the Einsatzgruppen on one point. I procured Document L-180 during the recess, and the total strength of Einsatzgruppe A was 990 men. It was composed as follows: Waffen-SS, 34 percent; drivers, 17 percent; administration, 1.8 percent; SD 3.5 percent; Criminal Police 4.1 percent; Stapo, 9 percent; Auxiliary Police, 8.8 percent—those, Your Lordship, were apparently indigenous police from the occupied territories—Regular Police, 13.4 percent; female employees, 1.3 percent; interpreters, 5.1 percent; teletypists, 0.3 percent; wireless operators, 0.8 percent.

That is Einsatzgruppe A, as far as I know; no documents are available for Einsatzgruppen B, C, and D, but the witnesses have testified that Groups B, C, and D had about the same ratio.

THE PRESIDENT: Then the extent is nearly four times as large as you said?

DR. GAWLIK: Yes.

THE PRESIDENT: Can you give a date for that constitution of Group A? What date was that, that constitution of those percentages?

DR. GAWLIK: The Einsatzgruppe D was formed before the beginning of the campaign, before June 1941.

THE PRESIDENT: When you get down to 0.3 percent, that must have been at a certain time. It could not have remained 0.3 percent all the time, could it, or is that an establishment?

DR. GAWLIK: Your Lordship, I do not understand. Which 0.3 percent do you mean?

THE PRESIDENT: I meant teletypists, 0.3 percent; wireless, 0.8 percent—did it remain at that exact figure throughout the whole war?

DR. GAWLIK: I assume so, Your Lordship. We do not have records on that.

THE PRESIDENT: The percentages are then matters of what in English would be called establishment?

DR. GAWLIK: They are average figures, Your Lordship. They may have changed slightly during the war, either more or less.

THE PRESIDENT: Very well.

DR. GAWLIK: I beg to apologize, My Lord, but I did not remember the first figure which I mentioned before the recess. I based my statement on the Einsatzkommandos and that is how I arrived at my figures.

Pages 68 to 71 deal with the Einsatzkommandos in prisoner-of-war camps (Statement of Evidence VI-B of the English trial brief against the Gestapo and the SD). Pages 72 to 75 deal with the

Bullet Decree (Statement of Evidence VI-C). Pages 76 up to 79 deal with concentration camps (Statement of Evidence VI-D), Pages 80 to 83 deal with deportation (Statement of Evidence VI-E). Pages 84 to 89 deal with the Commando Order (Statement of Evidence VI-F). Pages 90 to 93 deal with the Nacht-und-Nebel Decree (Statement of Evidence VI-G). Pages 94 up to 96 deal with summary proceedings (Statement of Evidence VI-H). Pages 97 and 98 deal with liability of next of kin (Statement of Evidence VI-E). Pages 99 and 100 deal with the shooting of prisoners in the Sipo and SD prisons in Radom (Statement of Evidence VI-J). Pages 101 and 102 deal with the employment of force in confiscations (Statement of Evidence VI-K). Pages 103 and 104 deal with third-degree interrogations (Statement of Evidence VI-L); and I continue on Page 105, Section D, which deals with crimes against humanity (Statement of Evidence VII of the English trial brief against the Gestapo and the SD).

The tasks and activities, as indicted here as executive tasks, were not within the competence of Ämter III, VI, and VII (Affidavits SD-41, 42, 45, 46). In Document 3428-PS the head of the SD and the SD itself are constantly referred to, but this, as is apparent from the above-mentioned context, obviously refers to the office of the Security Police and the SD. I refer in particular to the Affidavit Number SD-69 of Breiter.

A number of documents, such as Exhibits Numbers USSR-1, USSR-6, and USSR-119, submitted by the Prosecution, mention the SD. Here too, however, the evidence can be taken to show that this cannot refer to the Ämter III and VI—Domestic Intelligence Service and Foreign Intelligence Service—or Amt VII of the SD, which are under indictment. In this context I also refer to Document 2992-PS, the statement by Gräbe. Gräbe declared that during the shooting of Jewish men, women, and children at the airport at Rovno an SS man, wearing SS uniform with an SD badge on his left arm, had been sitting on top of the ditch. This fact is not sufficient to provide proof of the fact that this was really a member of Ämter III, VI or VII, for in the occupied territories members of the Einsatzgruppen and the units under the commander of the Security Police and the SD, in particular the officials of the Gestapo and the Criminal Police, all used to wear the same uniform with an SD badge. This was the uniform of the SS special formation SD, not the uniform of Ämter III and VI. The SS Sturmbannführer Pütz, mentioned in Gräbe's report, was not a member of the SD, but a Government Counsellor and an official of the Gestapo. For this I also refer to Affidavit Number SD-50 by Wanninger.

The Prosecution have also submitted Document Number 501-PS on the use of gas vans. I must point out that Amt III never issued instructions on the use of gas vans, as testified by the witness Dr. Ehlich. Document 501-PS submitted by the Prosecution shows by its reference Number II that the matter of gas vans was dealt with in Amt II of the RSHA. The SS Obersturmbannführer Rauff mentioned in the document was not a member of Ämter III and VI, but a group chief in Amt II of the RSHA. He was at that time in charge of motor transport. I refer in this connection to the testimony of the witnesses Ohlendorf and Hoeppner (Session of 3 January 1946) and to 60 affidavits from the entire Reich and the occupied territories for the period from 1941 to 1945, according to which the SD had nothing to do with the use of gas vans.

As regards the Prosecution Document 1475-PS I have already referred to Affidavit Number SD-69.

In the Prosecution Document L-180, the Stahlecker report, it is stated in enclosure Number 8 that the SD Section Tilsit had participated in liquidating Communists and Jews. For this I refer to Affidavit Number SD-12 by Ziebs. Ziebs belonged to the SD Main Section Königsberg, which received reports from the subsidiary SD Section Tilsit. Ziebs stated that the SD Main Section Königsberg never issued any such order and that no information was received there on the events described in the Stahlecker report. He, therefore, considers this

statement to be a mistake as to the place or the subject-matter. If members of the SD Section Tilsit should have participated in the execution of Jews and Communists, which Ziebs himself considers quite impossible, such activity would have been outside the scope of the tasks of the SD Section Tilsit and would certainly not have become known.

The members of the Domestic Intelligence Service, the Foreign Intelligence Service, and Amt VII had no knowledge of the activities of the Einsatzgruppen, especially not of shootings.

Document 3867-PS, submitted by the Prosecution, shows that the distribution contained no office of the SD (Amt III, VI, or VII or subsidiary offices). The reference Number IV A 1 indicates that the reports were compiled in an office of Amt IV (Gestapo).

The witness Hoeppner stated before the Tribunal that the Einsatzgruppen reports were not forwarded to subsidiary offices in the Reich and that members of SD offices in the Reich could not have had cognizance of the contents of the reports, including shootings of Jews and Communists. These reports went to only a few members of Amt III who were concerned with intelligence from the Eastern territories. I refer to the Affidavits Numbers SD-44, 47, 41, 48, 49, and 61; also to Document 2752-PS and the testimony of the witnesses Ehlich and Hoeppner.

I have also submitted 127 affidavits from all parts of the Reich for the period between 1941 and the end of the war, which prove in the main that (1) all members of the Einsatzgruppen were usually referred to as "SD" owing to their uniform equipment with the SD badge; (2) the employment of members of the SD in mass killings was not known to SD members in the offices within the Reich; (3) the honorary assistants of the SD had no knowledge of the activities of the Einsatzgruppen and Einsatzkommandos in the East.

II. Einsatzkommandos in prisoner-of-war camps. The SD is also charged with having formed special formations in prisoner-of-war camps for the purpose of establishing and executing racially and politically undesirable persons. My Documents Number SD 18-22 prove that this was not the task of the SD, but solely of the Stapo. These documents also show in particular that these Kommandos were not designated "Einsatzkommandos of the SD," as stated by the witness Lahousen.

The Defendant Jodl has confirmed the fact that prisoners of war were never turned over to the SD for special treatment, since the SD had entirely different tasks. The Defendant Jodl testified that prisoners of war were at the utmost turned over to the Security Police. It may thus be assumed to have been proved that the SD did not take part in these acts and was not employed for that purpose.

Although the witness Warlimont in his affidavit mentions that political functionaries were to be transferred to the SD (Document 2884-PS), this, in the light of the statement of the Defendant Jodl, may be taken to be a mistake in terminology, and presumably refers to the Gestapo. The documents submitted by the Prosecution fail to prove the contrary.

The witness Lahousen, in his affidavit of 14 November 1945 (Document 2846-PS), mentions the SD, although obviously he means the Security Police. This is clearly apparent from a statement he made before the Tribunal on 30 November 1945. According to the minutes of a conference which took place on the subject of the employment of these Kommandos between General Reinecke and Müller during the summer of 1941, he mentions Obergruppenführer Müller of the SD (Session of 30 November 1945). The Tribunal is familiar with the fact that Müller never belonged to the SD, Amt III or VI, and that he was the Chief of Amt IV, Gestapo, until the end. The witness Lahousen thus evidently was not referring to the SD, Amt III or VI, but to the Gestapo. The testimony of the witness Lahousen clearly indicates the competency of the Gestapo. He testified that Müller had taken part in the conference because he was competent for the executions in prisoner-of-war camps.

Document 502-PS supplies no proof of any participation of the SD. On the contrary, it proves that the Gestapo alone was competent for such measures, for the fourth paragraph before the end specifies that the Chief of the Einsatzkommandos was to contact the chief of the nearest local Gestapo office in connection with any executions or other measures. The Prosecution Document 1165-PS also proves that only the Gestapo was competent for such action, because these instructions, which referred to the executions undertaken, are

forwarded by Müller, the Amtschef of the Gestapo, to all Gestapo offices. Had the SD, Amt III or VI, in any way participated in such action, these instructions would equally have been forwarded to all SD offices.

Document R-178 consistently, though erroneously, speaks of Einsatzkommandos of the Chief of the Security Police and the SD employed for the purpose of selection. The fact is that—as the document shows—only the Gestapo offices Munich, Regensburg, and Nürnberg-Fürth undertook selection with their own special Kommandos. Captain Dr. Wölzl, mentioned on Page 21 of Document R-178, gave an affidavit saying that the SD had not participated in these selection Kommandos. In this connection I would also refer to Document 2884-PS. This is a decree by Warlimont, formerly Deputy Chief of Staff of the Wehrmachtführungsstab, dated 12 May 1941, on the uniform handling of executions of British prisoners of war. In this decree Warlimont correctly designates the Einsatzkommandos as "Einsatzkommandos of the Security Police."

The fact that the Gestapo alone was competent for executions of prisoners of war is apparent from an affidavit by Lindow. Lindow states that Section IV A I had a subsection directed by the Regierungsoberinspektor, later Regierungsamtmann, and SS Hauptsturmführer Franz Königshaus. This dealt with prisoner-of-war matters. This subsection also attended to the decrees and orders of Himmler during the years 1941 and 1942, according to which captured Soviet-Russian Political Commissars and Jewish soldiers were to be executed. Königshaus is stated to have prepared the orders for the executions and submitted them to Müller, the Chief of Amt IV. Early in 1943 the subsection was dissolved and distributed among the sections of IV B, according to countries concerned. In particular Lindow stated that the Einsatzkommandos in the prisoner-of-war camps had been directed by members of the Gestapo (Figure 4 of the Lindow affidavit, Document 2542-PS).

In proving my contention that the SD, Amt III, had no hand in these measures, I also refer to the affidavit by Fromm (SD-56). In this affidavit Fromm declared that the SD had special formations in the Government General. As to the territory of France, the witness Knochen stated before the Commission that no such special formations of the SD were employed in prisoner-of-war camps in France. I also draw attention to the testimony of the witness Ehlich before the Commission, who stated that such measures were not the task and activity of the SD, Amt III.

As for Amt VI, I refer to Affidavit Number SD-61, where the witness Schellenberg has testified that Amt VI was not competent either and was never employed in this connection. For Amt VII the witness Dittel made the same declaration (SD-63).

I also submitted 266 affidavits showing that in Russia, Poland, Alsace, Italy, Yugoslavia, Czechoslovakia, Lorraine, and the following regions of Germany: South Hanover-Brunswick, the Saar territory, the Palatinate, Munich-Upper Bavaria, Cologne, Württemberg, East Prussia, Upper Danube, Vienna, Military District VII, Bavaria, West Prussia, Styria, the Sudetenland, Hamburg, Upper Silesia, the Tyrol, Central Germany, Eastern Bavaria, Westphalia, Magdeburg-Anhalt, Berlin-Brandenburg, Swabia, Silesia, Central Franconia, Wartheland, Thuringia, Bremen, Holstein, Hesse, Saxony, and in a large number of cities, the SD did not have Kommandos in prisoner-of-war camps for the purpose of establishing and executing racially and politically undesirable prisoners of war. The declarations comprise the period between 1939 and 1945.

Bullet Decree. For the execution of the Bullet Decree the SD within the Reich, Amt III, was equally not competent, and it has never been employed for this purpose. The responsibility and competency for this decree has been correctly described by defense counsel for the Defendant Göring. It is stated that Hitler, in the absence of Keitel, gave the order for the shootings to Himmler, who directly transmitted it to Müller and Nebe. Müller was Amtschef of the Gestapo, Nebe Amtschef of the Criminal Police. This proves that the Stapo and the Criminal Police were competent for the execution of the order. This also becomes clear from Document D-569 with annex, the decree by the Chief of the Security Police and the SD dated 11 December 1941, embodying an ordinance from the OKW of 22 November 1941.

The decree of 11 December 1941 specifies that Soviet prisoners of war were to be transferred to the Stapo or the Einsatzkommandos. The ordinance by the OKW, dated 22 November 1941, provides that escaped Soviet prisoners of war

were in every case to be turned over to the nearest office of the Gestapo, such transfer to be subsequently reported to the Wehrmacht Information Center.

I also refer to the teletype by Müller dated 4 March 1944 (Document 1650-PS, USA-246), which is addressed only to the Stapo offices and the inspectors of the Security Police and the SD. This teletype contains orders for the Stapo offices to report on the execution of the order. Paragraph 2 then goes on to state that the prisoners of war were to be turned over to the local police office. Paragraph 3 mentions that escaped and recaptured British and American officers and nonworking NCO's were to be held in police detention in the locality of the Stapo office. Paragraph 5 indicates that the local administrative and police authorities were advised of this decree. Ämter III and VI were not informed, which would have been indispensable had they had any part in these measures.

Clearly the Prosecution have assumed participation of the SD from the fact that the Amtschef of the Gestapo, Müller, signed the decree as Deputy Chief of the Security Police and the SD, and also forwarded it to the inspectors of the Security Police and the SD. These titles, however, give no indication of any participation on the part of the SD.

The Prosecution have also referred to a letter from the Military District Command VI, dated 27 July 1944 (Document 1514-PS), but this document equally shows no participation on the part of the SD. In the heading preceding Figure 1 transfer to the Gestapo is specifically mentioned, and Figure 1 a states that the camp commander was to transfer the prisoners of war to the Gestapo, while Figure 1 b says that the prisoners of war were to be turned over to the nearest police office. Figure 1 c mentions that recaptured officers were to be turned over to the Gestapo and Figure 1 d specifies that Soviet officers refusing to work were to be transferred to the nearest Stapo office. Figures e, g, 3 and 4 equally only mention that the prisoners of war should be turned over to the Gestapo. The Document contains no orders indicating any participation of the SD. Under Figure 1 f mention is made of the selection Kommandos, which are here designated as Einsatzkommandos of the Security Police and the SD. I have already enlarged upon the fact that the SD took no part in these Einsatzkommandos either, so that this is obviously an error in terminology. The statement under oath by Willi Litzenberg (Document 2478-PS) also provides proof that only the Security Police had a hand in these measures. The SD, Amt III, VI, and VII, is not mentioned at all in this document.

The hearing of evidence for the Tribunal has shown that the Bullet Decree was executed by the Gestapo and the Criminal Police and that the SD did not participate. I refer in particular to the statements of General Westhoff (Session of 10 April 1946). I also refer to the testimony of a Senior Government Counsellor of the Criminal Police, Max Wielen, who was interrogated on the subject of the shooting of 50 RAF officers from the camp at Sagan. Wielen testified that the shooting was carried out by officials of the Gestapo (Session of 10 April 1946).

In this connection I also refer to the testimony of Keitel, who stated that Hitler had given orders that the prisoners of war were not to be returned to the Wehrmacht, but were to remain in the custody of the Police. The witnesses Rössner and Ehlich have also testified that the SD did not participate in the execution of the Bullet Decree and had no knowledge of this. As for Amt VI, the former Amtschef Schellenberg has made the same declaration in Affidavit Number SD-61, while Dittel, at the end Deputy Amtschef VII, has done the same for that Amt by Affidavit Number SD-63. I also refer to Affidavit 56, where Fromm made that declaration for the Government General, and the testimony of Knochen to the same effect for France.

I have submitted 288 affidavits showing that in the entire territory in the Reich, in the occupied Russian territory, and in the occupied territories of France, Lorraine, Italy, Czechoslovakia, Yugoslavia, and Poland the SD had nothing to do with the execution of the Bullet Decree. The statements cover the period between 1939 and 1945.

Concentration Camps. Under Figure VI D of the trial brief against the Gestapo and the SD the SD is further accused of having been responsible for the institution and distribution of concentration camps and for the assignment of racially and politically undesirable persons to concentration and extermination camps for the purpose of forced labor and mass murder.

The trial brief against the SS charges the SD with having been employed by the conspirators for the purpose of safeguarding their power by means of the

concentration camps, and thereby terrorizing any opponents. The Prosecutor for the United States on 19 December 1945 suggested that the SD and the Security Police had participated in the system of concentration camps when they detected and arrested victims.

Nothing however has been stated in substantiation of these allegations. The entire Section VI D of the trial brief does not even mention the SD, except in the heading. The Prosecution themselves, referring to Prosecution Documents 2108-PS—which is contained in my document book under Number SD-36a—and 1723-PS, state in Section VI D on Page 43 of the trial brief that the Gestapo alone had authority to place persons in protective custody and that the Gestapo possessed instructions to institute concentration camps, transform prisoner-of-war camps into concentration camps, set up corrective labor camps and to form special sections for female prisoners. I therefore believe that I can be very brief on this subject.

The statements by the Prosecution also prove that the Gestapo was competent for the institution and distribution of concentration camps and that the local Gestapo offices carried out arrests (Session of 2 January 1946). The proceedings have demonstrated that the entire administration of the concentration camps (food, accommodation, camp regulations) was the task of the WVHA, which was directed by Pohl. Here I refer in particular to the testimony of Kaltenbrunner (Session of 11 April 1946). The Inspector of Concentration Camps was immediately subordinated to Himmler. I also refer to the testimony of the witness Hoess, and the same is shown by the documents submitted by the Prosecution.

The Prosecution Documents D-50 and D-46 also show the sole competency of the Gestapo. The documents were issued by Amt IV of the Reich Security Main Office and signed by Müller, the Chief of that Amt. The Ämter III, VI and VII were not even informed of these decrees. The reference Number IV on Document 1063 A-PS also indicates that the Gestapo was exclusively competent, and it is irrelevant that the document was issued by Heydrich as Chief of the Security Police and the SD. This fact in itself does not indicate the competency of the SD, and from the distribution it can be seen that the SD in no way participated.

From none of the other documents mentioned on Pages 44 to 46 of the trial brief (2477-PS, 1531-PS, L-358, L-215, 1472-PS, 1063-D-PS, L-41, 1063-E-PS, 701-PS and 2615-PS) does any participation of the SD in the infliction of protective custody or assignment to a concentration or corrective labor camp result.

The very statements of the Prosecution and the documents submitted by them thus go to show that the SD had nothing to do with the institution and distribution of concentration camps and the transfer of racially and politically undesirable persons to extermination camps for the purpose of forced labor or mass murder.

In Document 3012-PS mention is made of an escape of SD prisoners, but from the context of the document it is clear that this refers to prisoners of the Sonderkommando IV A which had no contact, as far as organization goes, with the SD, Amt III, VI or VII.

I also refer to the testimony of Kaltenbrunner (Session of 11 April 1946), the affidavit by Dr. Mildner (Document Book Kaltenbrunner, Page 1), the testimony of Knochen, and the testimony of Von Eberstein, which equally show that the SD had nothing to do with concentration camps. Schellenberg and Dittel have shown in their Affidavits Numbers SD-61 and 63 that the Ämter VI and VII had nothing to do with the institution, distribution, and assignment of concentration camps either. I also refer to the affidavit by Fromm (Affidavit SD-56) and the affidavit by Laube (Affidavit SD-54), who have affirmed, for the former Government General and for France respectively, that the SD had no part in the assignment of persons to concentration camps or in the administration of such camps. In the case of France this was confirmed by the witness Knochen. As to the documents submitted by the Prosecution I refer to the testimony of the witness Dr. Ehlich (R-112, USA-309).

I also submit 289 affidavits for the entire range of the SD Hauptamt, as well as for the whole territory of the Reich and numerous occupied territories. The authors of these affidavits, which cover the period between 1934 and 1945, have stated as regards these territories that the SD had nothing to do with the institution and guarding of concentration camps, or with the assignment of persons to such camps.

Deportation. As a further charge against the SD the Prosecution have stated that the SD had participated in mass deportation of citizens of occupied countries for the purpose of forced labor. Furthermore, the Gestapo and the SD are alleged to have been in charge of punishment inflicted on forced laborers. The Prosecution have claimed that the important position which, besides the Gestapo, the SD had held on the subject of arrests for the purpose of forced labor, resulted from the following documents: L-61, 3012-PS, 1573-PS, 1063-B-PS. However, these very documents already provide proof of the fact that the SD was not competent for the entire subject-matter and did not become active in the execution.

Document L-61 is a letter by the Defendant Sauckel, dated 26 November 1942, to the presidents of the Provincial Labor Offices, in which it is mentioned that the Chief of the Security Police and the SD, in other words, Heydrich, had informed him that in the course of the month of November the Poles would be evacuated from the district of Lublin. This communication on the part of Heydrich, however, in no way shows that Heydrich made use of the Ämter III, VI, and VII for the purpose of this evacuation—if it was carried out at all, which is by no means certain. Such a procedure is, on the contrary, unlikely, for evacuation did not feature among the tasks incumbent on these Ämter.

Document 3012-PS is a letter from the Chief of the Sonderkommando IVa to the Kommando chiefs of his subsidiary Kommandos. I have already indicated that the Einsatzgruppen were entirely independent organizations from the Ämter III, VI, and VII, so that this document cannot be looked upon as incriminating any one of the Ämter named. Incidentally the document shows that the deportation was not carried out by the SD, but by the Security Police. It states literally:

> "In view of the present political situation, particularly with regard to the armament industry within the Reich, Security Police measures must be largely subordinated to the problem of the mobilization of labor in Germany."

In all other places this document also only mentions measures to be carried out by the Security Police.

The next Prosecution Document, 1573-PS, clearly demonstrates the competency for the execution of measures directed against foreign workers, and also indicates that such measures were applied by the State Police. This document bears the reference Number IV. It is signed by Müller and addressed only to State Police offices, the SD not even being mentioned in the letter, if only for information. It would undoubtedly have had to have been addressed to the SD too, if, as the Prosecution alleges, that agency had been employed in applying these measures.

As far as corrective labor camps are concerned, the Prosecution Document 1063 B-PS clearly shows that the Security Police was exclusively competent for them. It says in this document:

> "The Reichsführer SS has authorized, apart from the concentration camps administered by the WVHA, the institution of labor corrective camps, which will be exclusively in the competence of the Security Police."

During the session of 12 December 1945 the Prosecution have submitted a secret order by Hitler of 20 February 1942 (Document 3040-PS), concerning Eastern Workers and measures of compulsion to be employed in connection with them, and have alleged that this order had been addressed to the SD police officers, who never existed. The SD had no officers; only the Police did. From the contents of this document it can be seen clearly and without any doubt that the Gestapo alone was competent. It says in this document:

> "Lack of discipline, which includes refusal to work in disobedience to orders and slackness in work, will be combated only by the German State Police. Simple cases will be settled by the chief of the guard on the instructions of the State Police. In serious cases... the Gestapo will intervene with the means at its disposal."

In connection with the Prosecution affidavit made by Dr. Wilhelm Hoettl (Document 2614-PS) I have submitted the supplementary Affidavit Number SD-37 and the affidavit Gahrmann Number SD-38. Beyond this, in proving that the SD took no part in deportations, I refer to the testimony of the witness Ehlich before the Commission, the affidavit by Fromm, Number SD-56, and by Laube,

Number SD-54. The affidavit by Fromm, in particular, refutes the Prosecution Document L-61. As for France, the witness Knochen has testified that the SD did not participate in deportations.

The Prosecution Document 1063-PS also shows that the corrective labor camps were not subordinate to the SD, Amt III, VI, or VII. In this document it says specifically that the corrective labor camps were solely the competence of the Security Police. In particular I wish to refer to the testimony of the witness Albath before the Commission, who confirms this fact.

I have also submitted 276 affidavits by which members of the SD for the period between 1939 and 1945 have stated, as regards the territories formerly occupied by Germany of Alsace, Russia, Poland, France, Belgium, Italy, Yugoslavia, Czechoslovakia, and the entire territory of the Reich, that the SD was not employed in connection with the deportation for forced labor or in guarding forced labor camps.

As far as Ämter VI and VII are concerned, I refer to the affidavits by Schellenberg (Affidavit SD-61) and Dittel (Affidavit SD-63), which show that these Ämter were not active in the deportation and did not guard forced labor either.

Furthermore, it is stated in the trial brief against the SS, III G, that immigration centers were organized for the purpose of conducting evacuations under the control of the Chief of the Security Police and the SD and the Chief of the Reich Security Main Office. In this connection the Prosecution cite Document L-49, an affidavit by Otto Hoffmann. For this I refer to the testimony by Dr. Ehlich and the affidavit by Sandberger (Affidavit SD-64).

Commando Order. A further accusation brought against the SD of having participated in the execution of the Commando Order is due to the fact that the Wehrmacht agencies by mistake used the abbreviation "SD" for the Security Police. In this connection I would refer to my earlier statements in the second chapter. The fact that in documents and interrogations of witnesses the term SD has been used, although no reference to the Ämter III and VI was intended, can be traced to this repeated error in terminology.

In the first place this applies to Document 498-PS, Exhibit USA-501. The distribution on this document clearly shows that "SD" was not intended to mean the intelligence service, Amt III or VI, but the Security Police. According to this distribution the Reichsführer SS and Chief of the German Police had received the 16th and 17th copy, one being for the Main Office Security Police. Ämter III and VI do not figure in the distribution. If the SD in the Reich, Amt III, or abroad, Amt VI, had been competent for this measure, this order would have had to have been transmitted to these two Ämter, since otherwise they would not have been able to comply with it.

That, in fact, the execution of this order was not the task of the SD, Amt III or Amt VI, but of the Security Police, is clear from the letter by Müller, dated 17 June 1944 (Document 1276-PS, USA-520) and addressed to the OKW. This letter deals with Hitler's order of 18 October 1942 and the execution thereof. Among other things it says:

"Transfer to the Security Police will only be considered when such members of Commandos . . ."

The last paragraph mentions security measures. The reference Number IV and the fact that the letter was written by Müller, and not by one of the Amtschefs III or VI, clearly indicates that these measures were carried out by the Security Police, and not by Amt III and VI.

This particular document evidences the repeated error as to SD and Security Police; it is quite clear from this letter that the term SD was employed as an abbreviation for the Security Police. Although the text of the letter contains only the term Security Police, and it is specified that the Commandos are to be turned over to the Security Police, and that Security Police agencies shall assist in interrogations conducted by the Wehrmacht units, the letter contains a handwritten annotation by the official in charge at the OKW saying: "Thus arrested by SD."

Another mistake in terminology common in Wehrmacht agencies occurred when Admiral Wagner during his interrogation before the Tribunal on 14 May 1946 persisted in speaking of the SD in connection with the Trondheim incident.

The same mistake in the application of the word SD is contained in Prosecution Document 532-PS (Exhibit Number RF-361), a letter from Commander-in-Chief West dated 26 June 1944, and in Documents Numbers 531-PS, 551-PS,

D-649, 727-PS, 735-PS, D-774, D-775, D-780 and Exhibit GB-26. This erroneous application of the term SD had apparently become the custom with the Wehrmacht and other offices to such an extent that even Raeder, Keitel and Dönitz speak of transfers to the SD, although the SD was not competent for such measures.

The Prosecution have further referred to the Decree of 4 August 1942 (Document 553-PS, USA-500) which, however, shows clearly that the Security Police were competent for the execution of this order. The order does not say that parachutists were to be turned over to the SD, but it was specified that they were to be transferred to the offices of the Chief of the Security Police and the SD. The same applies to Document Number D-864, Exhibit Number GB-457, in which reference is exclusively made to the competent office of the commander of the Security Police and the SD.. This is something entirely different. The Chief of the Security Police and the SD was identical with the Chief of the RSHA and superior to the Ämter I to VII. This term thus fails to furnish proof that Ämter III and VI were competent. Beyond this, the Decree of 4 August 1942 makes it clear that by these offices only Ämter IV and V, that is, Gestapo and Criminal Police, can be meant, because under I, Figure 1, it says:

"In all territories where the offices of the Security Police and the SD are established as executive, combating of individual parachutists is . . ."

I draw attention to the words "as executive". Offices as executive agencies were only those of the State Police and the Criminal Police. The SD had no executive powers.

The hearing of evidence before the Commissions has clearly shown that such orders have been executed solely by the Security Police, although in numerous documents, owing to an error in terminology, the SD is mentioned in place of the Security Police. I refer primarily to the Prosecution Document 526-PS, Exhibit Number USA-502, a top-secret matter, dated 10 May 1943, where it says that the Führer Order had been executed by the SD. The witness Dr. Hoffmann testified on 27 June 1946 before the Commission that here, since it was an executive measure, Security Police should be read instead of SD, because the Wehrmacht often mixed up the two terms. The correctness of the statements of the witness Dr. Hoffmann is corroborated by the testimony of the Defendant Jodl as a witness before the Tribunal.

The Prosecution have next referred to Document C-176, Exhibit Number GB-228. This concerns the Commando action at Bordeaux, where it says on Page 713 that the two captured Englishmen had been shot by order of the Führer in the presence of an officer of the SD. According to the testimony of the witness Knochen, the term SD was meant to indicate an official of the Gestapo.

The fact that the Security Police actually was competent for the execution of the Commando Order and that "Security Police" should be read instead of "SD" in the orders of 4 August 1942 and 18 October 1942, is also apparent from the affidavit by Dr. Mildner of 16 November 1945 (Document 2374-PS). In this affidavit Mildner has stated that instructions had been issued to the Wehrmacht to turn over all members of British and American Commando units to the Security Police. The Security Police was to have interrogated and subsequently shot these men. Mildner has also stated that the decree had been transmitted, through the Chief of Amt IV, Müller, to the commanders and inspectors of the Police. Had the SD, Amt III or Amt VI, been competent, the order would not have been transmitted by the Chief of Amt IV, Gestapo, but by the Chiefs of Ämter III and VI to the offices of these organizations.

I further refer to the affidavit by Walther Huppenkothen (Affidavit Gestapo-39), formerly a Government Director in Amt IV E, RSHA, who, in connection with the agreement between Amt IV and the OKW on the subject of treatment of enemy radio agents, stated that such persons were in all cases to be turned over to the Gestapo, and that the Gestapo had frequently though erroneously been designated SD by Wehrmacht agencies.

The Prosecution furthermore allege that the aims and tasks of the SD included affording protection to civilians who had lynched Allied airmen. In substantiation of this claim the Prosecution have submitted Document Numbers R-110 (Exhibit Number USA-333), 2990-PS, and 745-PS. Document R-110 is addressed only to the Police, not to the SD. According to the affidavit by Schellenberg of 18 November 1945 (Document 2990-PS) the Defendant Kaltenbrunner is stated to have said that all offices of the SD and the Security Police were to be informed

that they were not to intervene in lynch actions against British and American airmen. In the supplementary affidavit submitted by me, Number SD-51, Schellenberg has stated that by this remark Kaltenbrunner did not refer to the SD but only to the Security Police. The letter from the SD Section Coblenz to the Inspector of the Security Police and SD equally fails to show that the tasks of the SD included promotion of lynch justice, or that the SD had in any way taken part in such measures. The letter merely contains a communication from the SD Section Coblenz to the effect that the OKW had issued a similar order to Himmler's and Bormann's and that this order had been distributed down to company commanders for reading out to their units. It cannot, thus, be deduced from this letter that the SD had in any way taken part in such lynch justice, or had promoted it. I also refer to Document 057-PS, the order by Bormann, which is equally only addressed to the Police and the organizations of the Party. Kaltenbrunner's order, dated 5 April 1944 (Document 3855-PS, USA-806) is issued by Amt IV, Gestapo.

The witness Hoeppner declared on 1 August 1946 that the SD had received no instructions from Himmler not to interfere in clashes between the German population and Anglo-American airmen. Since the SD exercised no police functions, the problem of intervention did not arise in any case. The affidavits Schellenberg (Affidavit SD-60) and Dittel (Affidavit SD-63) show that Ämter VI and VII were also not competent for the execution of the Commando Order and lynch measures and have never been used to this end. I have also submitted 284 affidavits for the entire territory of the Reich and covering the period between 1939 and 1945, which prove that the SD was in no way involved in the execution or maltreatment of Allied parachutists.

Nacht und Nebel Decree. A further point in the indictment of the SD deals with participation in the execution of the Nacht und Nebel Decree. Competence for the execution of the Nacht und Nebel Decree was divided between the Wehrmacht offices and the Gestapo, as is shown by Document L-90. The Wehrmacht offices had received instructions to impose the death penalty for criminal acts against the Reich and the occupation army, undertaken by non-German civilians. However, if no such punishment was to be expected, these civilians were, according to Paragraph IV of the first supplementary regulations to the instructions contained in Document Number 91, to be taken to Germany by the Secret Field Police, there to be turned over to a Stapo office. I also refer to the ordinance by the OKW dated 2 February 1942 (Document L-90), which shows that the RSHA (Kriminaldirektor Dr. Fischer) was competent for the execution of the Nacht und Nebel Decree. From the Prosecution Document L-185, the plan showing the distribution of work in the RSHA, dated 1 March 1941, it can be seen that Kriminaldirektor Dr. Fischer was in charge of Subsection IV E 3, Counter-Intelligence West, in Amt IV.

This state of affairs is borne out by the second Prosecution Document 833-PS of 2 February 1942, signed by Canaris, Chief of the Amt Ausland Abwehr in the OKW. These instructions provide that subjects of foreign countries coming under the Nacht und Nebel Decree were to be sentenced by the competent military courts in the territories occupied by Germany, provided that (a) the sentence involves capital punishment; (b) sentence is passed within 8 days after arrest. In all other cases the counter-intelligence agencies were to determine the time of arrest. The counter-intelligence agencies were to communicate any arrests to the RSHA, attention of Kriminaldirektor Dr. Fischer. The RSHA would then name a Stapo office which was to take over the prisoners. The distribution too shows that Ämter III, VI, and VII were in no way involved.

The next Prosecution Document 668-PS, a letter by the Chief of the Security Police and the SD, dated 24 June 1942, with equal clarity shows the sole competence of the Gestapo. The letter was issued by Amt IV, specifically by Subsection IV D 4. Had the execution of the Nacht und Nebel Decree come within the competence of the SD, this letter would have had to have been issued by one of the Ämter III, VI, or VII.

I further refer to the testimony of the witness Dr. Ehlich before the Commission and to the testimony of the witness Knochen. Both have stated in conformity that the SD was not competent for the execution of the Nacht und Nebel Decree and did not take part therein.

As to the decree by the OKW, signed by Keitel on 18 August 1944, it is true that it says that civilians were to be turned over to the SD; however, in this

respect I refer to the affidavit by Keitel (SD-52). The same applies to the decree issued by Westerkamp on 13 September 1944, where the reference can also only be taken to mean the Gestapo.

In Document D-762, Exhibit Number GB-892, under Figure 1, the SD is not mentioned, but only the Wehrmacht, the SS, and the Police. The method of expression used in Figure 2 is unclear. Instead of "the nearest local office of the Security Police and the SD" it should have stated "the Chief of the Security Police and the SD." Document D-764, Exhibit Number GB-299, under Figure 4 correctly mentions the office of the Security Police and the SD. According to the whole context, Figure 5a can thus be taken as referring by "SD" to the competent police body. The SD was not even kept informed, as can be seen from the distribution. Of Document D-764, 11 copies were prepared; copies 1 to 10 were sent out to the Wehrmacht commanders, while copy 11 was communicated to the Gestapo. Had the SD been competent, the decree would have to have been sent to them as well.

In connection with the decrees signed by Keitel (Session of 11 April 1946), in which it says that certain persons were to be turned over to the SD, I refer to the testimony of Keitel, according to which the designation "SD" has erroneously been used instead of "Security Police."

I also submitted 270 affidavits which show that in the occupied territories of Poland, Yugoslavia, Latvia, Czechoslovakia, Russia, Lorraine, Belgium, Eupen-Malmedy, and in the following regions of Germany: Munich-Upper Bavaria, Rhine Province, Württemberg, Hamburg, Saar-Palatinate, Silesia, Berlin, Styria, Thuringia, Sudetenland, Upper Silesia, the Tyrol, Saxony, Baden, Central Germany, Westphalia, East Prussia, Hesse, Moselle District, Eastern Bavaria, Holstein, Swabia, West Prussia, the SD had nothing to do with the execution of the Nacht und Nebel Decree. These statements cover the period from 1941 to 1945.

From the affidavits by Schellenberg (Affidavit SD-61) and Dittel (Affidavit SD-63) it is clear that Ämter VI and VII also had no hand in the execution of the Nacht und Nebel Decree.

Summary proceedings. Neither was the SD competent for the application of summary proceedings. In this connection I wish to draw attention to the following contradiction: In the heading of Section VI H the Prosecution allege that the SD, through summary proceedings, had arrested, brought to trial, and convicted subjects of occupied countries. In the text under this heading it is, however, shown that such special criminal proceedings were applied by the Police. All the documents submitted are concerned with the Gestapo. I refer to the German transcript (Session of 2 January 1946), where only police courts and Gestapo summary courts are mentioned.

The fact that the Police alone were competent is obvious from the documents submitted by the Prosecution. Document 654-PS repeats the contents of a preliminary discussion between Thierack and Himmler on their intention of turning over proceedings against Jews, Poles, Gypsies, Russians, and Ukrainians from the regular courts to the courts of the Reichsführer SS. Another Prosecution Document, L-316, issued by the RSHA II on 5 November 1942, simply contains notice that such proceedings were to be transferred to the Police from the judicial authorities.

Criminal proceedings against Jews were, in fact, transferred to the Police from the judicial authorities, and I refer in this connection to my Document Number SD-56. With regard to proceedings against Poles, Gypsies, Russians, and Ukrainians, no instructions to that effect were given. This is confirmed by the statement of the witness Lammers before the Tribunal (Session of 9 April 1946).

The fact that in practice the SD had nothing to do with sentences pronounced against such persons appears from the letter from the President of the Court of Appeal and the Chief Public Prosecutor at Katowice of 3 December 1941, addressed to the Reich Minister of Justice. This report mentions that 350 members of an organization involved in high treason had been hanged by the Police following instructions given by the Chief of the Stapo office in Katowice.

I further refer to the answer to Question Number 5 in the affidavit by Mildner of 29 March 1946 (Session of 11 April 1946). Here Mildner stated that these punishments and executions were ordered by Himmler, the orders being transmitted, through Kaltenbrunner and Müller, to the commandants of the concentration camps.

On 1 August 1946 the witness Hoeppner testified before the Tribunal that it was not among the functions of the SD to set up summary courts. The affidavits by Scheilenberg and Dittel (Affidavits SD-61 and 63) show that Ämter VI and VII were also not competent for the application of summary proceedings. Furthermore, covering the period from 1939 to 1945, I have submitted 209 affidavits for the RSHA, Amt III, and a number of regions within the Reich and in the occupied territory of Russia, Czechoslovakia, Italy, and Poland, which indicate that the SD was never in any way involved in summary proceedings for the purpose of convicting and executing subjects of occupied countries.

Retaliation against next of kin (Sippenhaftung). In substantiation of the allegation that the SD had executed or imprisoned in concentration camps persons related to individuals accused of crimes, the Prosecution have referred to Document L-37, Exhibit Number USA-506. From the reference number of this document: IV B c — 5/44 GRS, it is quite clear that this matter was attended to by the Gestapo.

The next Prosecution Document, L-215, the original file on the deportation of Luxembourg nationals in 1944, clearly shows that the Gestapo dealt with the matter. I would point to the reference Number IV indicated on the various letters. This volume also contains numerous letters from the Stapo offices IV. The whole volume contains no letter indicating any participation of the SD. The witness Hoeppner stated on 1 August 1946 that the SD had nothing to do with retaliatory measures against next of kin.

I also refer to the affidavit by Fromm (SD-56) who testified that the SD, Amt III and VI, had nothing to do with the measures indicated in Prosecution Document L-37. Schellenberg and Dittel have also stated in their affidavits (SD-61 and 63) that Ämter VI and VII did not participate in retaliatory measures against next of kin. I also refer to 210 affidavits submitted by me, which show that the SD was not involved in any such measures in the territories formerly occupied by Germany of Russia, Italy, Czechoslovakia, Yugoslavia, and Poland between 1939 and 1945.

Shooting of prisoners in the Security Police and SD prison at Radom. In connection with this point, the Prosecution have submitted Document Number L-53, a letter by the commander of the Security Police and the SD at Radom, dated 21 July 1944. The reference number of this letter also shows that this was purely a Gestapo affair. I also refer to the affidavit by Fromm (SD-56), who stated that the SD had no prisons in the Government General, that by Security Police and SD prisons the detention institutions of the Gestapo were meant, and that the matter treated in Document L-53 had not been dealt with by the SD. The fact that no SD prisons existed is also made clear by the testimony of Ehlich before the Commission.

I also refer to the affidavit by Dr. Laube, who testified that the SD never had or ran prisons or detention institutions of its own. In particular, Dr. Laube has confirmed this in the case of France, and the statements of Dr. Laube, as far as they deal with France, are supported by the affidavit by Wollbrandt (SD-14). In the case of Minsk, this has been confirmed by Gerty Breiter (SD-69).

The affidavits by Schellenberg (SD-61) and Dittel (SD-63) show that Ämter VI and VII were not competent either. I have also submitted 189 affidavits for the entire territory of the Reich, Russia, Poland, and Czechoslovakia for the period covering 1939 to 1945, in which it is stated that by and to the SD no instructions were issued to murder prisoners in prisons in order to forestall their liberation by Allied troops, and that the SD never had a hand in such acts.

I have also submitted 22 collective affidavits covering the period between 1935 and 1945 which show, for the occupied territories of Russia, Eupen-Malmedy, Italy, Belgium, and Latvia, as well as for the territories of Brunswick, South Hanover, Aachen, West Prussia, East Prussia, Bavaria, the Saar Territory, the Palatinate, the Rhine Province, Württemberg, Vienna, Upper Danube, Styria, the Tyrol, and the Sudetenland, that the SD at no time and in no place carried out arrests, and that there existed no SD prisons or prisoners.

Requisitioning by force. Document Number 1015-PS shows quite clearly that the Einsatzstab Rosenberg was competent for the requisitioning of public and private property in all occupied territories. The Prosecution have referred to the Documents R-101, 071-PS, and 2620-PS. Document R-101 shows that requisitioning was carried out and ordered by the Main Trustee Office "Ost." Document Number 2620-PS, concerning Einsatzgruppen A, B, C, D, and Einsatzkommandos,

provides no indication of the fact that Ämter III or VI were in any way active in requisitioning public or private property.

Document 071-PS shows that requisitioning of works of art was to be conducted by the Police. "Requisitioning conducted by the Police" and "attention of the Police" are terms specifically mentioned. The document goes on to say that historical works and documents were demanded by the Police. Material is also mentioned which the Police justifiably requisitioned for purposes of their work. This document is simply another instance of the fact that the Police is meant by the term SD, for it says that requisitioning will be undertaken by the SD or the Police, although the text later shows that requisitioning was carried out exclusively by the Police. Thus, whenever this document mentions the SD, it presumably refers only to the Police. The evidence submitted by the Prosecution in itself already shows that the SD did not participate in the criminal acts alleged by the Prosecution. I also refer to the testimony of the witness Dr. Rössner. The witness Franz Straub and the witness Knochen have testified, for Belgium and France respectively, that requisitioning of art treasures was not carried out by the SD. I further refer to the affidavit by Klauke (Number SD-15) who testified that Amt III never requisitioned property of Jews, Communists, Free Masons, or other political opponents. Beyond this, Kutter, Number SD-20, stated under oath that the SD within the Reich had strict orders not to carry out any executive measures, which would have included requisitioning.

Schellenberg, in Number SD-61, and Dittel, in Number SD-63, have stated, as far as Ämter VI and VII are concerned, that neither of these two Ämter carried out any requisitioning of public or private property. I have also submitted 495 affidavits showing that during the period from 1934 to 1945 in the entire German territory as well as in the occupied territories of Alsace, France, Russia, Eupen-Malmedy, Poland, Italy, Lorraine, Luxembourg, and Czechoslovakia, the SD was never employed in requisitioning and distributing public or private property.

Third-degree interrogations. The SD was not competent to conduct third-degree interrogations. In trying to prove their allegation to that effect, the Prosecution have referred to Document 1531-PS. From the testimonies and the documents submitted by me it is clear that the SD had no executive powers and was, therefore, unable to conduct any interrogations, including those involving third-degree methods. The Prosecution Documents 1531-PS and L-89 show that the Stapo alone were competent to conduct third-degree interrogations. The decrees contained in Document 1531-PS and dated 26 October 1939 and 12 June 1942 bear the reference Number IV and are signed by Müller. Ämter III, VI, and VII were not even informed of this letter. The letter from the commander of the Security Police and the SD for the district of Radom, dated 24 February 1944, was also sent by Section IV A. The regulations contained in this letter, referring to the application of third-degree methods, were addressed only to the Security Police in the Government General, as is clearly apparent from the text of the letter. The letter furthermore specifies that the matter and extent of third-degree interrogations is conferred on the Chiefs of Sections IV and V, the Stapo and the Criminal Police.

The witness Hoeppner has testified that the SD never conducted any interrogations, so that it could not do so with regard to third-degree methods either. The affidavit by Kutter, Number SD-20, shows that all SD members had strict orders to refrain from any executive interrogations within the territory of the Reich. As for France, I draw attention to the minutes on the interrogation of the witness Knochen, who declared that the SD in France was not entitled to conduct interrogations or questionings. Schellenberg and Dittel, by their Affidavits Numbers SD-61 and 63, have also stated that Ämter VI and VII were not authorized to carry out interrogations.

I have also submitted 76 collective affidavits covering the period from 1934 to 1945, showing that the SD did not conduct any interrogations, thus none involving third-degree methods either, within the entire territory of the Reich, Poland, Czechoslovakia, Yugoslavia, and Russia.

THE PRESIDENT: Can you tell the Tribunal what, according to your contention, the SD did in the concentration camps?

DR. GAWLIK: The SD had nothing to do with concentration camps, My Lord. One must differentiate between two facts: assign-

ment to concentration camps by means of a protective custody order; the protective custody order was always issued by the Gestapo. The SD was not competent for that. And, secondly, the administration of concentration camps: concentration camps were under the jurisdiction of the SS Economic and Administrative Main Office, Obergruppenführer Pohl. This was an independent organization which operated alongside the RSHA. Thus, if the Gestapo issued a protective custody order, then the detainee came under the jurisdiction of the SS Economic and Administrative Main Office. The SS Economic and Administrative Main Office was directly under Himmler, just as was the RSHA.

THE PRESIDENT: So that you say that the RSHA and Pohl's organization and the Einsatzgruppen were all three entirely separate organizations under Himmler? Is that right?

DR. GAWLIK: Yes.

THE PRESIDENT: What name was given to Pohl's organization?

DR. GAWLIK: Economic and Administrative Main Office.

THE PRESIDENT: Economic and what?

DR. GAWLIK: Economic and Administrative Main Office. The chain of command in the concentration camps, My Lord, was Himmler down to Pohl, and then to the commandants of the concentration camps.

THE PRESIDENT: And do you say that the Economic and Administrative Main Office employed no SS, or SD, or Gestapo, or Sipo?

DR. GAWLIK: No SD men were working in the Economic and Administrative Main Office, at least no SD men from Amt III; neither from Amt III nor from Amt VI. As far as I am informed, there were also a few Gestapo men...

THE PRESIDENT: Didn't any men work with the "SD" on their arms in concentration camps?

DR. GAWLIK: That I cannot say for certain, My Lord. I believe so; I cannot say.

THE PRESIDENT: You will recollect that there was a good deal of evidence which indicates that SD men were working in concentration camps; and the Tribunal would like to know what your explanation of that evidence is.

DR. GAWLIK: I can only recollect, My Lord, what the witness Milch said; as far as I can remember he said the commandant was an SD man; but that must be an error, because Ämter III and VI had nothing to do with this. It may be that these men in the concentration camps belonged to the SS special formation "SD," but I

cannot answer that question with any certainty, Your Lordship. I can only . . .

THE PRESIDENT: What was this special formation of the SS which was called SD?

DR. GAWLIK: They were all members of the RSHA, of all seven offices, Amt I; Amt II; Amt III, SD Inland; Amt IV, Gestapo; Amt V, Kripo; Amt VI, Foreign Intelligence Service; and Amt VII. Those members who were members of the SS or candidates for membership in the SS were united under the SS formation SD, so that they did not need to do service in the local units of the SS.

THE PRESIDENT: As far as I can understand what you say, you are saying that in the branches of the RSHA all SS were called SD?

DR. GAWLIK: The members, as far as they were members of the SS—for instance, if a Gestapo employee was a member of the SS, then he belonged to the SS special formation SD.

THE PRESIDENT: Go on, Dr. Gawlik.

DR. GAWLIK: Your Lordship, I should like to say the following with reference to this subject: it is something which refers to service abroad. In the eastern territories all members of the Security Police, even if they were not members of the SS, wore this SS uniform with the SD badge.

And now I come to crimes against humanity, persecution of Jews. The prosecution of individuals for crimes against humanity was unknown in international law until now. It was merely admitted that if a state violated any principle of humanity, other states had a right to intervention. As an example I mention the intervention of Britain, France, and Russia against Turkey in 1827; against the Balkan States in 1878; and the intervention brought about by the atrocities committed in Armenia and Crete in 1891 and 1896 (Fenwick: *International Law,* 1924, Page 154 following).

This right to intervention for crimes against humanity was not generally recognized. Oppenheim, *International Law,* Volume I, Pages 229-237, for instance, considers an intervention to end religious persecution and continued cruelty in war and peace in the interest of humanity, as questionable. According to Oppenheim it should be a rule that interventions in the interest of humanity be admissible; they must, however, be of a collective nature. In accordance with the general fundamental rule of international law that only the states are subject to international law, this intervention is directed only against the state in which crimes against humanity have been committed.

The Charter introduces an entirely new element by decreeing the prosecution of individuals for crimes against humanity. That is probably why, according to Article 6(c) of the Charter, persecution

for political, racial, or religious reasons is not in itself a crime. It is, on the contrary, necessary that this persecution be carried out in executing a crime or in connection with a crime for which this Tribunal is competent. It is therefore not sufficient that the Prosecution alleges, on Page 53 of the trial brief against the Gestapo and SD, that it had been one of the tasks of the SD to keep the Gestapo informed about the Jews. On the contrary, it is necessary to prove for what purpose this information was rendered.

The witnesses Wisliceny and Dr. Ehlich have been examined before the Commission on the work of the SD in Jewish affairs. Wisliceny declared that Amt III of the RSHA had no department for Jewish questions. From 1936 until 1939 there was in the SD, in Central Department II/1, a department for Jewish questions. This department for Jewish questions allegedly did not have the task of preparing the extermination of the Jews.

Dr. Ehlich furthermore testified that in Amt III no department concerned itself with the Jewish question, and especially not Department III B 3. As a result of the regulations defining the tasks of Amt III and Amt IV, it had been determined that all Jewish questions were only to be dealt with by Amt IV.

I refer further to Affidavits SD-27, SD-16, and SD-17. Schellenberg, SD-61, and Dittel, SD-63 have stated with regard to Ämter VI and VII that these offices had nothing to do with the persecution of the Jews either.

Furthermore, there are 259 collective statements available from former SD members for the entire area of the Reich, and for the time from 1933 until 1945.

THE PRESIDENT: Have any of these affidavits to which you are referring been translated?

DR. GAWLIK: No, My Lord, only the summary affidavit has been translated.

THE PRESIDENT: Well, some of your affidavits have been translated, have they not?

DR. GAWLIK: Some of them, My Lord, yes, but not those 259; they have not been translated, My Lord. They are contained in my summary, SD-70.

For their allegation that the SD had participated in the persecution of Jews in 1938 the Prosecution have submitted three teletypes dealing with anti-Semitic measures, of 10 November 1938, as Document 3051-PS. In this connection I draw attention to the affidavits I have submitted as Numbers SD-27, 16, and 53, according to which the SD took no part whatever in the pogrom of November 1938. I also refer to 107 affidavits for the entire territory of the Reich, stating that the SD had not participated in the pogrom.

Although the affidavit Gestapo 14 mentions that members of the SD office Magdeburg were arrested, punished, and sent to a concentration camp for participation in the outrages, this only shows, firstly, that the SD had no orders to take part in the pogrom, and secondly, that wherever this did occur, the SD members involved were punished.

The evidence has not shown that the SD Ämter III and VI of the RSHA participated in the extermination of the millions of Jews. All Jewish affairs were dealt with by Amt IV, by Eichmann's section. Eichmann belonged to Amt IV and was the head of Section IV B 4. This is shown by the organizational plans of the RSHA of 1 January 1941 and 1 October 1942, Document L-185, and Document L-219 submitted by the Prosecution.

The chain of command for the mass murder of Jews was: Hitler, Himmler, Müller, Eichmann. Not one of the witnesses has indicated that Ämter III, VI, and VII, or any of the local branches of these offices co-operated in the extermination of Jews. In this connection I refer in particular to the testimony of Wisliceny, according to which there was no connection between the department of Eichmann and Ämter III, VI, and VII, and further to the evidence of Dr. Hoffmann. Hoffmann stated that Amt IV was competent for deportations, and that Eichmann was responsible for the final solution of the Jewish question.

In the occupied territories all Jewish affairs were also handled by Amt IV, the Eichmann department. The initial "IV J" on Document RF-1210, submitted by the Prosecution, shows that a department of Amt IV dealt with the Jewish questions in France. This is confirmed by the testimony of the witness Knochen and by the Laube Affidavit, SD-54, which I submitted. They show that Hauptsturmführer Dannecker, who was sent to France by Eichmann, also belonged to Amt IV and received his instructions directly from Eichmann himself. Thus, no connection existed between Ämter III and VI and Eichmann's department.

Referring to Denmark and Holland, the witness Dr. Hoffmann testified that the deportation of Jews from these countries was carried out solely by the Eichmann agency. Moreover, on 3 January 1946, Wisliceny made an extensive statement on this subject before the Tribunal, saying that the deportation of Jews in the Balkan countries was also carried out by the Eichmann department.

The Trial has in no way established that the SD Ämter III, VI, or VII in any way supported the Eichmann agency.

THE PRESIDENT: One moment. Then that is another organization which is directly responsible to Himmler, is it, the Eichmann department? You gave us the RSHA, the Pohl organization, and another organization which I forget for the moment—oh, the Einsatzgruppen; that was three organizations which were entirely outside the SS or the SD or the SA, and now you have got another one. That is the Eichmann organization.

DR. GAWLIK: The legal position is not the same as in those three organizations which I cited. Eichmann was really in Amt IV, but probably it would be better if my colleague, Mr. Merkel, were

to answer that question. I do not want to encroach on the material of my colleague Merkel, who represents the Gestapo. Eichmann had an office in Amt IV, the Gestapo.

THE PRESIDENT: Go on.

DR. GAWLIK: It is true, however, that Eichmann and a number of other persons who worked in his department in Amt IV were formerly employed in the SD. In this connection, Wisliceny has testified before the Tribunal that these persons were in part assigned to Amt IV, and in part transferred there. They received their orders exclusively from Amt IV. The witness Hoffmann has declared that Eichmann was transferred from the SD to the Gestapo.

The fact that persons had worked in the SD before they worked in Eichmann's section is in no way sufficient to declare the SD a criminal organization. These persons were completely eliminated from the activity of the SD when they were taken over by Amt IV, or when they were assigned to Amt IV.

The decisive question is whether the extermination of the Jews was one of the aims and duties of Ämter III, VI, or VII. The fact alone that these people resigned their activity in the SD and were taken over into Amt IV proves incontestably that this activity was not among the aims and duties of the SD. Moreover, the majority of the members of Ämter III, VI, and VII did not know that individual persons who had formerly been employed in the SD were now occupied in Amt IV with the final solution of the Jewish question.

I now come to the persecution of the Churches. The Prosecution has asserted in this connection that the Gestapo and the SD had been the main departments for the persecution of the Churches; that the SD had pursued secret ends with deceptive maneuvers against the Church; that the SD had collaborated with the Gestapo; that the SD had dealt with the opposition of the Church against the Nazi State; that the persecution of the Church had been one of the fundamental purposes of the SD.

I am of the opinion that these general allegations do not suffice to declare the SD as criminal for persecution of the Church. Article 6(c) of the Charter does not speak of persecution of the Churches but of persecution for religious reasons. The documents submitted by the Prosecution, which merely contain the general allegation that the Churches had been persecuted, therefore do not suffice. On the contrary, it should have been shown that this persecution was carried out for religious reasons.

The concept "persecution" will, moreover, need to be explained. Not every measure can be understood as "persecution," which was undertaken against members of denominations by the State. Here, rather, we have to start from the concept of human rights. The

Charter does not define what is to be understood as violation of human rights from a religious viewpoint.

A number of writers on international law, for instance, Bluntschli, Martens, Bonfils, and others, take this to be the right for existence; the right for protection of honor, of life, of health, of liberty, of property, and of religious freedom. I refer in this connection to Oppenheim's *International Law,* Volume I, Page 461. Only a violation of this right...

THE PRESIDENT: Is it your contention that Germany had the right, outside the territory of the Reich, to treat the Church which existed there in any way they thought right? Take, for instance, in Russia; in the Soviet Union. Is it your contention that there Germany could treat the Church and Church property in any way they thought right, if that is not in accordance with international law?

DR. GAWLIK: You have to differentiate between conditions inside and conditions outside of Germany. Outside of Germany the general principles of international law applied. My statements deal with conditions in Germany. The SD has also been accused by the Prosecution, in Document 1815-PS, which is a document from Aachen, that it had persecuted the Churches inside Germany. There, in my opinion, you have to draw a distinct dividing line, and what I had been saying referred only to conditions inside Germany. Only a violation of this right for religious reasons will therefore fall under this penal code.

The evidence on this point of the Indictment has established the following: The witness Rössner has testified that since the existence of Amt III, no Church questions, but only general questions of religious life, were dealt with in such a manner that the religious tendencies, wishes, and preoccupations of all sections of the population were registered, without assessing their confessional adherence in the sense of a persecution of the Church, or causing or supporting police measures. The witness has also stated, in particular, that the SD carried on no sham proceedings in order to persecute the Church. The witness Dr. Best (a witness for the Gestapo) has testified that any police intervention in individual Church cases was the task of the Stapo. According to the statements of the witness Rössner, the decree of 12 November 1941, which ordered that Amt IV should take over entirely all Church affairs from Amt III, was but the formal confirmation of an already existing state of affairs.

For the period before 1939 I refer to the affidavit of Fromm (Affidavit SD-19), and particularly to SD-55, by Theo Gahmann. I draw your attention to the fact that the English Document Book H, which deals with the persecution of the Churches, contains no evidence against the SD. Documents D-75, D-101, D-145, 848-PS, 1164-PS, 1481-PS, and 1521-PS contained in this document book were purely police affairs.

THE PRESIDENT: Go on.

Dr. Gawlik: The Prosecution have submitted Document 1815-PS. First of all it should be noted that this simply deals with a local occurrence from the area of the Stapo office in Aachen. All grounds are lacking for any assumption that these happenings can be generalized to apply to the entire Reich. All the facts contained in this letter emanate from the local Stapo office or from Amt IV in Berlin. The file contains no letter addressed to or by the SD. This fact in itself contradicts the theory of co-operation between the SD and the Gestapo, for in that case this large file would have had to have contained some documents showing orders or instructions for the SD. Individual cases are not referred to at all in the document. From the fact that certain SD members were transferred to Amt IV to deal with Church matters, the strict separation of tasks is clearly apparent. The decree of 12 March 1941, contained in Document 1815-PS, according to which, after the SD had transferred Church matters to the Gestapo, numerous Stapo offices were ordered to start on the organization of a suitable intelligence system, shows quite clearly that the SD, Amt III, was not permitted to deal with Church matters, that the intelligence service for police matters, as turned over from the SD to the Gestapo, was useless from the point of view of persecution of the Churches, and that neither before nor after this time did the SD ever give assistance to the Gestapo. I have also submitted 259 affidavits by SD members from the entire territory of the Reich and covering the period from 1935 to 1945, showing that the SD did not persecute any Churches.

I believe I have shown that a collective sentencing of all members of Ämter III and VI, which is the intention of the Prosecution, would not do justice to the tasks and activities of Ämter III and VI.

If, however, the Tribunal should pass sentence on the SD against my explanations, then the number of persons affected by this decision ought to be strictly limited, especially in view of Law Number 10. The general designation "SD" should not suffice, because of the manifold meaning of this word.

It will have to be clarified whether the decision affects:

1. Only members of Ämter III and VI, which were not founded until September 1939, or also members of Central Department II/I of the SD Main Office;

2. only the full-time members or also the honorary members;

3. from among the honorary members, only the collaborators, or also the Vertrauensmänner (confidential agents);

4. from among the Vertrauensmänner, only the permanent employees, or also those who furnished occasional reports;

5. also the technical personnel, secretaries, drivers, telephone operators, *et cetera.*

High Tribunal, your decision will be a milestone in the history of law, but it could also be a milestone in the history of humanity. The striving of the people is toward peace. Influential politicians as well as representatives of legal science agree that this wish of humanity can only be fulfilled by an independent jurisdiction unbounded by state sovereignty.

James Brown Scott, the President of the American Institute for International Law, established in a speech, delivered in the year

1926, that the history of mankind is but the history of the individual upon a larger scale. In the history of the individual the right to take justice into one's own hands has given way to an arbitration by the parties concerned...

THE PRESIDENT: Go on.

DR. GAWLIK: ...and out of this developed the juridical procedure of nominating judges and ensuring the execution of their judgments.

Violence is violence; whether between armed individuals or entire peoples, who in the case of war have at their disposal the last resources of their governments.

Today the peoples in their development, as compared with the development of the individual, are in a state of transit from the arbitration system to a regular juridical system. Nature repeats herself from day to day, from generation to generation, whether in individuals or in such groups of individuals as we call state or nation. The international arbitration system will be the basis for the regular juridical system of the United Nations, which is unbounded by state sovereignty, just as among the peoples the regular juridical system has developed out of the arbitration system.

We are at the dawn of this era in the history of peoples, an era which is the end of belligerent struggles and would thus fulfill the deep wish of all the peoples. The International Military Tribunal could fulfill this task in world history.

THE PRESIDENT: Dr. Gawlik, I have before me the English translation of your speech, and on Page 113 of the speech there appears to be a reference, in the paragraph which has Number 1, to the Main Office of the SD. I would like to know, for the benefit of the Tribunal, what you mean by the Main Office of the SD. Do your pages correspond?

DR. GAWLIK: Yes, My Lord. The SD Main Office existed until 1939. It had the following departments: II-1 "Gegnerforschung" (Enemy Investigation), and when the RSHA was founded that department was transferred to the Gestapo.

THE PRESIDENT: The Main Office of the SD was transferred to the Gestapo?

DR. GAWLIK: No, not the entire main office, My Lord. Until 1939 there was an SD Main Office, and in September 1939 the RSHA was founded. The RSHA only existed since September 1939. Before that there was the SD Main Office, which had various subdepartments, and one department of that SD Main Office was transferred to the Gestapo when the RSHA was founded. That department was called II-1.

THE PRESIDENT: Did the Main Office of the SD cease to exist in September 1939?

DR. GAWLIK: Yes, it then ceased to exist. And Department II-2 then became Amt III of the RSHA.

THE PRESIDENT: You are saying, are you not, that II-I, which was a branch of the Main Office of the SD, was transferred to the RSHA and became Amt II in the RSHA?

DR. GAWLIK: No, My Lord, Amt II-1 came into Department IV of the RSHA, that is, the Gestapo. Department II-2 became Amt III in the RSHA.

THE PRESIDENT: At any rate, the SD Main Office ceased to exist, and all passed into the various Ämter of the RSHA?

DR. GAWLIK: Yes.

THE PRESIDENT: Yes.

DR. GAWLIK: We are at the dawn of this era in the history of peoples, an era which is the end of belligerent struggles, and would thus fulfill the deep wish of all the peoples. The International Military Tribunal could fulfill this task in the history of the world if by its decision it were to indicate that it intends to be the Court above all nations, which is the aim of politicians and of representatives of legal science. The collective condemnation of the members of the organizations, however, is not the way to fulfill this aim because this would punish the innocent as well. This Tribunal can only be built up on the principle: no punishment without the establishment of the guilt of the individual.

THE PRESIDENT: I do not know that the Tribunal has laid down any exact order, and I am not sure how far the translations of the various speeches have now gone, but perhaps counsel for the organizations know how far their speeches have been translated and therefore which it is most convenient to take now.

Is it you, Dr. Laternser?

DR. LATERNSER: Yes, Mr. President.

THE PRESIDENT: We will take the High Command now, then.

DR. LATERNSER: So far as I know, the English translation of my final plea is completed. The French translation, apparently, is mostly completed; I have just seen one copy of it here and the Russian translation—I do not know about that.

THE PRESIDENT: Very well.

Yes, Dr. Laternser.

DR. LATERNSER: My Lord, Gentlemen of the Tribunal:

It has happened more than once in the history of nations that after a war the military leaders of the defeated party were brought

to trial. If the defeated war leaders or generals could not be reproached with ineptitude or negligence of their military duties, they were suspected of treason, of pursuing political aims, or they were accused of infringing the rules of warfare or the limitations of their military powers.

There is one feature, however, which must be noted: as a rule, trials were conducted and verdicts rendered by their own state, and not by the enemy victors. To find examples for the latter case, one must go back into history by more than 2,000 years. The Romans strangled their enemy Jugurtha in jail, and persecuted Hannibal with their vengeance until they were able to force the cup of poison into his hands at the court of his host. In more recent history, there is the sole example of Napoleon I, who was banished by the victorious powers to St. Helena, where he died; but he was not taken to account by the victors because he had served his country as a French general, but because he was the Emperor of the French, and consequently the political head of his country.

Hitler, who was the head of the German Reich, and the Supreme Commander of the Armed Forces, has eluded judicial responsibility by his death. Since he can no longer be dealt with, the Prosecution have taken the highest military commanders instead of the Supreme Commander and head of the State, made them summarily also political leaders, and are attempting in this way to render them responsible.

This method is indeed unique and without precedent in the history of nations, and may well be contemplated with peculiar feelings by all soldiers of the world.

If one thing stands out clearly from the collection of evidence—and I shall have to deal with this in detail later on—it is the fact that the German military leaders did not dominate their country and did not drive it into the war, that they were not politicians, but exclusively, and perhaps even too exclusively, soldiers—which is the tragic part. Had they been politicians, Germany would not have fallen into this abyss. If we keep this clearly in our minds, it is obvious that these men are in fact facing trial before this Court only because they served their country as soldiers.

If the Prosecutor, Colonel Taylor, argues that Hitler could not have waged his wars without the assistance of the Armed Forces, that argument cannot be invalidated. Nobody has ever been able to wage a war without soldiers. However, what Carlyle says is true for the German military leaders as for all soldiers:

> "If a man becomes a soldier, his soul and his body thereby become the property of his commanding officer. He is not allowed to decide for himself whether the cause for which he

fights is good or bad. His enemies are selected for him, and not by him. It is his duty to obey and to ask no questions."

If the German military leaders are today indicted before this Court as an alleged "criminal organization," this indictment does not only apply to them, but is in fact directed—however strongly it may be desired to deny this publicly—at the soldiers in general, or at least at the military leaders as a class.

By indicting the military leader—who, obeying the orders of his government, has fulfilled his military duties—because the Prosecution declares the action of his government to be illegal and represents him as a partner to such action of the government, the Prosecution places upon him the obligation to examine the legality of his country's policy, and raises him to the position of a judge called upon to give a verdict on the policy of his state.

It cannot be my task to present the consequences of such a mental revolution for the soldiers of the world. I can only ask the Tribunal to consider, with particular care and in full consciousness of its peculiar responsibility, these special circumstances when it applies the principles of the Charter to the special position which the soldier occupies both in fact and in law. Whenever a noble judge, after careful self-examination, comes to the conclusion that all sorts of reasons might tempt him to be prejudiced against a defendant, he will feel an obligation to weigh the evidence with special care, and to ask himself again and again whether he is guided by a genuine appreciation of the facts, or rather by a sentimental attitude.

Now in this case, where one party is passing judgment on the other—the Prosecution calls this modestly a flaw—where the judges come exclusively from nations against whom the defendants fought as soldiers, in this case, I say, the judge is required to do something that is humanly almost impossible, namely to free himself, in the interests of the future of mankind, from the feelings engendered by the struggle which has just come to an end, and from the passions which were whipped up in its course. I conduct the defense in the expectation that, as regards the German military leaders whom I represent, this Tribunal will not exercise retaliation, but will in truth render justice in the highest meaning of the term.

The whole Indictment is based on the attempt to include 129 high-ranking officers of the German Armed Forces, who occupied certain service positions in the military hierarchy, under the double designation "General Staff and OKW" in a "group" both in law and in fact.

Before dealing with the legal aspects of the alleged "group character," I must present some observations on the term "General Staff" and "High Command of the Armed Forces" (OKW).

There never existed during Hitler's time a General Staff for the whole Armed Forces, as the Prosecution obviously seems to think, along the lines of the "Great General Staff" of the former Imperial Army. The Navy neither had an Admiral Staff nor Admiral Staff officers. The "Naval Operations Staff" set up in the autumn of 1938 was in no way similar to a General Staff. The Navy only participated in the functions of the Army, and of the Armed Forces in general, to the extent to which operational co-operation was required in individual cases.

The Air Force had a General Staff of its own, consisting of the Chief of the General Staff and the General Staff officers. Its functions, however, were sharply distinguished from those of the General Staff of the Army and were limited to the Air Force's own sphere of activity. Co-operation between the two existed only in the case of joint operations.

Nor was the General Staff of the Army itself, as the Prosecution seems to think, a central agency, but it consisted likewise merely of the Chief of the General Staff and of the General Staff officers.

How little the position of this General Staff corresponds to the picture drawn by the Prosecution becomes apparent from the fact that its first Chief of the General Staff, General Beck, was only twice received by Hitler during his whole term of office from 1935 to 1938.

The "General Staffs" of the Army and of the Air Force, which actually existed, are not in the least concerned with the Indictment, for the indicted 129 officers did not represent these General Staffs as an entity; out of the whole group, the sole members of these General Staffs were General Jodl, as Chief of the Armed Forces Operations Staff (Wehrmachtführungsstab), the Deputy Chief of this staff, and the Chiefs of the General Staffs of the Army and the Air Force. All other generals were not General Staff officers, but troop commanders. A great many of them, namely, 49 out of the 129 officers, were not even members of the General Staff at an earlier date. If the Prosecution nevertheless give this group of persons the name of "General Staff," then this amounts to the same thing as if in the Roman Catholic Church one were to indict the Order of the Jesuits while really meaning the Cardinals.

The term "General Staff," therefore, does not cover the 129 indicted officers, but all General Staff officers, who are not in the least concerned with the Indictment. It is misleading and arbitrary. A verdict based on the designation "General Staff" would be directed against an institution the members of which are not indicted.

The "High Command of the Armed Forces" (OKW) had even less the importance of an independent and central leading agency.

The proceedings before this Court have clearly shown that this was only Hitler's military operations staff, and that it had no independent powers of its own to give orders. Only four out of the 129 persons ever belonged to the High Command of the Armed Forces. None of the others are covered by this designation.

The double designation "General Staff and OKW" does not improve matters either. What is here called "General Staff and OKW" actually represents all the officers who occupied the highest positions in the course of this war. They were nothing but the heads of the military hierarchy, sharply divided among themselves, according to the three service branches. The only link between these high-ranking officers was their relation within the military hierarchy, their common professional ethics, and the spirit of comradeship, as is the case in all armies.

The term "General Staff and OKW" is therefore an accumulation of wrong designations, arbitrarily selected in order to pretend that there existed a combination of something that was never combined, and is not even capable of being combined. As regards the 129 officers, neither the name "General Staff" nor the designation "OKW," nor the combination of these two designations "General Staff and OKW," produces a definition covering the functions or the persons concerned.

The erroneous designation in itself might perhaps be no obstacle to a condemnation, if it could be replaced by a more fitting name. The term often used by the Prosecution, "highest military leaders," or the designation "holders of the highest ranks in the German Armed Forces," would substantially cover the total number of the indicted officers more adequately than the erroneous term "General Staff and OKW." Both designations, however, would only be a loose definition and constitute a clear indication of the fact that there existed a multiplicity of persons, but could never be considered as proof of the existence of any kind of combination of these persons.

There are no other terms possessing the value of proof; on the contrary, the very fact that one must search and search again even to find a term and that one still only finds an expression to cover 129 individual persons but that no organized combination can be shown, forces us to conclude that a legal or factual setup, call it what one will, never existed.

Although these wrong designations and the impossibility of finding a correct term constitute in themselves already strong arguments against the assumption of a "group or organization," it is still necessary to deal with the legal conditions which must be fulfilled in order to be able to consider the indicted 129 officers at all as a "group" or "organization," although it might be nameless.

Since the Charter does not define the terms "group" and "organization," it is necessary for me to say a word or two on the definition of these terms.

In the first place, there is the question as to whether the term "group" is something different from the term "organization," or whether both terms are identical. As the Charter uses both terms side by side, even in the same sentence, it must be assumed that these two designations were deliberately chosen in order to emphasize at least a difference in fact.

Article 9 of the Charter gives rise to justified doubts as to whether it was actually intended to characterize two different phenomena, because under this Article the Tribunal is only authorized to declare the groups and organizations to be "criminal organizations." Therefore, the Tribunal cannot declare a "group" to be a "criminal organization" if it does not possess the corresponding characteristics, that is to say, if it is not itself also an organization. In this case, the quality of group would be legally irrelevant as far as Article 9 is concerned; an unorganized group could not be declared to be criminal.

Nevertheless, the question of the "formation of a group" must be re-examined. As regards the definition, it must be based, according to the American Chief Prosecutor, on the common usage of the language. That means: The main characteristic of the existence of a "group" of people is the local co-existence of a multiplicity of persons. One speaks of a "group picture" if several persons are shown side by side, of a group of "curious onlookers" if a number of people are watching side by side the same event. From this it follows that another condition which must be fulfilled to constitute a "group" is the simultaneous co-existence of persons. As these two characteristics are lacking in the case of the group of high-ranking generals and admirals, as defined by the Prosecution—these officers who belong to the most different agencies were never, neither before nor during the war, locally collected, nor simultaneously and jointly active—there can be no question of a "group" either in the linguistic or in the factual meaning of the word.

If this circle of officers cannot be considered as a "group" because the necessary conditions for the formation of the "group" are lacking, the question remains as to whether it was a "group similar to an organization," or even an "organization." If we take the common usage of the language again as our starting point, we find that the main characteristic of an organization is the fact of "its being organized." However, a combination of people is only "organized" if it possesses organs of its own, acting on behalf of the organization, while its creation, its powers, and its activities are based on some sort of a constitution. Furthermore this association—irrespective of whether it be founded in law or may only

have an existence based on sociological fact—must be able to develop through its own organs a will of its own. An organized association must be, as the prosecutor himself admits, an "entity."

It is true that this "entity" need not find expression in so concrete a form that it appears as a subject in law, but it must at least outwardly show the characteristics just mentioned, and must constitute as to its substance a deliberately created voluntary association of several persons for the pursuit of common purposes.

The main characteristic of an "organization," according to this definition, is the "inner purpose" of the association. The external form is not alone decisive for its existence; on the contrary, an associated multiplicity of persons does not become an "organization" unless its inner purpose is that of the pursuit of common aims.

As regards the circle of officers concerned, the conditions are completely lacking both in law and in fact, which might justify the assumption that they constitute a "group similar to an organization," or an "organization." Even the most important condition, namely that of voluntary membership, is not fulfilled. These officers did not occupy their positions voluntarily, nor did they remain in these positions voluntarily. But that the condition of voluntary membership must be fulfilled has already been indicated by the Tribunal in its definition of the points of proof considered relevant, and the Prosecution, too, have called these conditions essential. It is true that the military leaders voluntarily chose the military profession. They did join the Reichswehr voluntarily in 1920, and in so doing, had to commit themselves for 25 years under a contract. However, they were promoted to the posts which come under the Indictment exclusively by reason of their ability, and without any initiative of their own. By virtue of the commitment entered into they could not ask to be retired as long as they were capable of carrying out their duties, certainly not during the war when resignation was explicitly prohibited to them. These events and facts require no proof, as they are the same or similar in all the armies in the world. They are based upon the military power to give orders on the one hand, and the military obligation to obey on the other.

Thus it is proved that the "General Staff and OKW" do not in any way constitute an association of persons based upon voluntary membership. But it also cannot be assumed that we are here concerned with an "organization" because the further condition, namely, the consciousness of these officers that they had joined an association at the moment of their appointment, was lacking.

Any citizen who voluntarily joins an organization knows, at least, that this organization exists and that he is joining it. But these officers were assigned without being consulted to the posts

which only now are arbitrarily designated as a group or organization by the Prosecution. How could they, in these circumstances, have been aware, at the time of their appointment to the various service positions, that this appointment was equivalent to acquiring membership in any kind of association?

The argument of the Prosecution that at an earlier date a similar association of General Staff officers existed in what was called the "Schlieffen Society," is irrelevant in connection with the appreciation of the legal aspect with which we are here concerned. The "Schlieffen Society," which only met once a year for a lecture and a report, was exclusively concerned with cultivating the spirit of comradeship between the former General Staff officers and those on active service. There was not the slightest reason for the German and Austrian officers on active service, who originated from the three service branches, to set up a similar association during the war.

The foundation of a political community was even more out of the question in view of the traditionally unpolitical attitude of the whole German officer corps. The idea that a criminal purpose might have caused an association to form, as the Prosecution would like us to believe, is quite absurd.

If, therefore, these officers neither took up their posts voluntarily nor had the consciousness of joining an association, or of assembling in an organization, the sole fact that they occupied the posts covered by the Indictment cannot, in itself, prove that we are concerned with an "organization."

There are also the following facts which are opposed to a deliberate association and the existence of an organization. A large number of the officers concerned had never met personally at all. Only some of these officers have ever had contact with each other in connection with their official duties.

All inner homogeneity was lacking in this circle of high-ranking officers, who are alleged to be so unanimous in their opinions. This Trial has more than anything else before brought out very clearly the divergencies of opinion and inner oppositions existing among these high-ranking military leaders.

THE PRESIDENT: We will break off there for a recess.

[A recess was taken until 1400 hours.]

Afternoon Session

DR. LATERNSER: The absurdity of this "group experiment," however, is best illustrated by the inclusion of Himmler in the circle of these Army officers. It is a well-known fact that Himmler was the deadly enemy of the Army, and that the leaders of the Armed Forces and those of the Waffen-SS had little association with each other except that occasioned by purely military operations at the front line. It is precisely the inclusion of Himmler and of some of the leaders of the Waffen-SS which constitutes a convincing proof against the existence of this really impossible institution.

Nor does the time element permit the assumption that we are concerned with an "organization." The military leaders were not all at their service posts simultaneously, but in office at such widely separated periods that only a fraction of them could have been members at the same time. This is shown most clearly by the graphs submitted to the Tribunal. According to these graphs there were only seven generals in 1938, only 22 generals on 7 September 1939, only 31 generals on 22 June 1941, and only 52 generals in November 1944, that is to say, much less than half of the indicted officers were in the positions covered by the Indictment.

There existed no uniform will on the part of all these 129 officers. Every one of them, it is true, was subjected to one single will above his own, but only in a military respect, not as regards an existing organized association. How could these officers at any time appoint organs of their own for the expression of their will? The constant change in the positions of those concerned would have excluded any such possibility. Only nine generals and admirals occupied positions for the entire duration of the war which would allow them to be included among the so-called "group." On 4 February 1938 only six generals held such positions; 21 generals held positions coming under the so-called "group" for periods of only 2 to 2½ years; 61 officers are counted as belonging to the "group" although they did not hold such positions for even a year.

Just as the functionaries of a "group" were lacking, so also was a constitution or a statute governing the joining and withdrawal of members, the authority and the activity of its functionaries, their election or appointment. There existed not a single written or oral provision dealing with any kind of a community. The Prosecution were, therefore, unable to submit even a single document proving the existence of a "group" or an "organization."

The affidavits submitted to the Tribunal by the Prosecution, which were to prove, on the strength of the statements made by

Generals Von Brauchitsch, Halder, and Blaskowitz, that a "group" did exist, have proved to be quite unsuitable for this purpose as a result of the corrections which were subsequently made. The hearings of Field Marshal Von Brauchitsch before this Court, and of General Halder before the Commission, have shown that the identical affidavits of both generals constituted a condensed version of several interviews, drawn up by the interrogating officer and submitted to them for signature, and that those written statements were unintelligible in all the points which are of decisive importance in this question, without the additional explanations given by the witnesses before they signed these statements. Consequently, the interpretation given to those statements by the Prosecution is wrong. The corrections which have now been made have not been refuted and have thus deprived the Prosecution of its main argument and of every proof in favor of the existence of a "group."

The same applies to the affidavit of General Blaskowitz, which was submitted to the Tribunal in the course of these proceedings. They have also been rectified and completed by Affidavit Number 55. Thus, the conclusions drawn by the Prosecution have also in this case proved to be wrong. Nor has a joint action which could be regarded as the expression of the collective will of the organization been proved in any of the cases under consideration.

It is quite impossible to bring such proof since this circle of officers had neither by law nor by nature the capacity to negotiate, and could not therefore have exercised any joint action as an organization. Nor did these officers hold any meetings from which the existence of any kind of an organization might be inferred. The Prosecution are quite wrong if they believe that as a proof of their theory they can cite military discussions with Hitler, and a number of meetings of field commanders.

When from time to time meetings of the Supreme Commander of the Army were held with the commanders-in-chief of the army groups, or armies, this was always done for purely military purposes, and the discussions were exclusively concerned with military questions. The assignment of the commanders-in-chief to widely dispersed theaters of operations and their permanent and complete absorption by their military duties made it impossible from the very outset for them to meet for reasons other than purely military ones. For the same reason not even the highest military commanders maintained close contact with each other, particularly since the frequently mentioned Führer Order Number 1 limited the knowledge of each one of these commanders-in-chief to his own sphere, whatever his position might be. Since the three service branches, apart from their operational co-operation in individual

cases, existed side by side in complete independence, joint discussions of the commanders from the various service branches were, for this very reason, held only on very rare occasions.

Although the Prosecution have referred to an affidavit by General Blaskowitz in order to prove the contrary, the latter's supplementary affidavit, Number 55, has shown that he was misunderstood on this point too. There have never been frequent meetings of the high-ranking generals in the sense implied by the Prosecution. The Prosecution have wrongly interpreted events and acts resulting from the purely military execution of certain tasks.

The well-known meetings with Hitler can be used even less as a proof of the existence of an institution similar to an organization, since they were held—and this was repeatedly explained in the course of these proceedings—merely in order to allow the participants to listen to a speech by Hitler, and subsequently to receive his orders. Regarded from the point of view of the commanders, these meetings, therefore, had a purely military character.

I think I can therefore sum up as follows:

(1) The 129 officers concerned merely represent a multiplicity of persons, who neither in law nor *de facto* possessed the capacity to negotiate, and therefore cannot be the object of a special legal, much less penal, judgment.

(2) The designations "General Staff" and "High Command" are misleading and wrong.

(3) The circle of officers concerned was neither a "group," nor an "organization," nor an institution of organizational character.

(4) The circle of members, which is clearly defined in any organization, would in this case be the subject of long drawn-out discussions.

(5) None of the officers ever declared to have joined an organization, or was conscious that he had joined an organization, or of having been a member of it. Most of the so-called "members" did not even know each other personally, and their attitude to the regime was widely divergent.

(6) There was no acting "executive organ," no "constitution" or "character." No "concerted will" was in evidence, nor was any "concerted action" discernible.

(7) The officers concerned, whose names and number we know exactly, can therefore be held responsible only as individuals, and only for crimes which they have personally committed. They were never grouped together collectively, and therefore cannot now be grouped together collectively merely in order to facilitate their punishment.

In ancient times—after the battle of Aigospotamoi—certain generals were once to be condemned by a collective verdict for a kind of crime against humanity. They had failed to bury their dead. Thereupon, Socrates rose in court, argued against this proposition in a passionate speech, and demanded that the Tribunal should uphold the principle which was the absolutely indispensable condition of any just verdict, namely: That every military leader could only be indicted as an individual, and sentenced only in accordance with the measure of his personal guilt. Socrates was heeded. The Tribunal maintained the principle in spite of the opposition of public opinion, and refused to render a collective verdict. Should modern times throw overboard so easily something which has been looked upon as a fundamental principle of law for the past 2,000 years?

I believe that a collective indictment and a collective conviction are impossible. If only for the reasons which I have just presented, the Tribunal will have to reject the motion to declare the so-called "General Staff" and "High Command" group as a criminal organization. But if one follows through the theory of the Prosecution further—without personally accepting it—the "criminality" of all the 129 officers would have to be examined. In other words, it must be ascertained whether this group as a whole has committed crimes in the sense of Article 6 of the Charter. For my part I deny this.

The accusation leveled by the Prosecution at the military leaders, of having at some time combined with the Nazi Party for purposes of executing a common plan, the objects of which were wars of aggression, war crimes, and crimes against humanity, presupposes that such a general plan did exist, that it was known as a common plan, and finally, that the military leaders, as a whole, had made this plan their own.

The Prosecution have raised these charges against the indicted group of persons as a whole. But I believe I have already proved that such an "organization" or "group" as an acting entity of these persons did not exist. The Prosecution circumvents this unavoidable difficulty by asserting that,

(1) the character and the actions of the five military major defendants are characteristic of all the 129 officers, and

(2) that, moreover, there is no doubt as to the criminal character of the entire group of these officers.

The American Chief Prosecutor explained in his speech that the human actions which are the subject of this Trial have been considered crimes ever since the time of Cain. To this I reply that since the days of Cain it has been claimed that the just shall not

be destroyed together with the unjust in the expiation of crimes. The requirement of individual expiation of crimes committed is among the oldest elements of European morality.

I think it ought not to be too difficult for the four great victorious nations in practice to reach a similar decision in 107 individual trials on the individual guilt or innocence of these 107 living men as is being done in the trial against the five military major defendants. Where is the inner justification of, and the legal necessity for, a collective trial against these men? The innocent individual is only too easily condemned by a preconceived collective verdict.

The opinion expressed by the Prosecution that the ideas and actions of the five major defendants are "with absolute certainty" typical also of the other members of the so-called "group," and thus at the same time of the criminal character of the "group" itself, is contradicted by the facts themselves. Membership in the "group" is conditioned exclusively by the holding of certain positions. Therefore only the holder of a typical position is typical of the "group." Since 95 percent of the officers concerned were commanders-in-chief of armies or army groups, the holders of these posts might possibly be considered as typical of the "group" as such, but this can in no case be said of the five major defendants, not a single one of whom ever held such a post.

On the other hand, the five major defendants are definitely nontypical inasmuch as they held positions not held by any other members of the "group." There is no second Chief of the High Command or Chief of the Operations Staff in this group, nor is there a second Commander-in-Chief of the Navy, and there is certainly not a second Reich Marshal. As the major defendants occupy a higher level in the military hierarchy than the typical military leaders, their position is different in respect to the decisive points. Although one or the other of the major defendants perhaps had a theoretical opportunity to influence the military resolutions of the Supreme Leadership, the typical members of the group certainly could not do so. If the major defendants, at least in their own sphere, knew the circumstances and backgrounds of the orders given, or could obtain such knowledge, this was impossible for the typical member of the group. If, in the case of the major defendants, a certain amount of political activity was unavoidable because they were at the highest levels, this was completely absent in the case of the field commanders. This short observation strikingly shows the arbitrary character of the Indictment combining heterogeneous elements and extending without further ado to the whole of the heterogeneous elements charges which the Prosecution, rightly or wrongly, believe they can bring against the major defendants.

I am unable to follow the Prosecution in this direction, and in my observations I shall therefore not deal with the nontypical major defendants, but only with those members who can be considered as typical of the overwhelming majority of the "group." Only the attitude which these members adopted towards the alleged plans of the Nazis, only their knowledge of these plans, and the extent to which they co-operated in their execution, might lead to a charge against the "group" in the sense of the Indictment.

Since Hitler is dead, the Prosecution leaves him in the background, and looks for other responsible parties. Yet no one can deny that Hitler alone wielded the power of the Reich in his hands, and consequently also had the sole and total responsibility. The essence of every dictatorship ultimately lies in the fact that one man's will is almighty, that his will is decisive in all matters. In no other dictatorship was this principle developed so exclusively as in Hitler's dictatorship. If all military men and all politicians emphasize this repeatedly, it is impossible to suspect every one of them of lack of courage to stand by his conviction; it must have been a fact. The dictator exercised the power given to him with an almost demonic strength of will. Other than his, there was no will, no plan, no conspiracy. As regards the soldiers, it was particularly significant for them that Hitler had been called upon to assume power by Reich President Von Hindenburg, and had then been made absolute head of State by Reich law and public plebiscite. The perfectly legal and formally correct transfer of legislative power, and of the power to give orders, resulted in the fact that the soldiers, too, submitted to Hitler's personality. Furthermore, he knew how to play off one party against the other, but in his decisive resolutions he had neither advisers nor did he allow independent planning.

Hitler's character is truly comparable with that of Lucifer; just as Lucifer starts out on his radiant course of light with tremendous speed and immense momentum, gaining the highest pinnacle before falling into utter darkness, so Hitler followed a similar course. Who ever heard that Lucifer needed assistance, advisers, helpers in his lightning ascent? Does he not rather by the force of his personality carry with him to the dizzy heights all the others, and then pull them down into the depths with the same force? Is it imaginable that a man of this kind should have engaged in a long-term preparation of a plan, surrounded himself with a circle of conspirators, and sought their advice and assistance for his ascent?

This picture should not be interpreted as an attempt to elude responsibility: every German general is enough of a man to stand up for his actions; but if justice is to be done, the actual circumstances, as they really were, must be recognized and serve as a

basis for the final judgment. The best proof, however, against the participation of the generals in Hitler's plans is given by Hitler himself when he says: "I do not expect my generals to understand my orders; I only expect them to obey them."

Just as at the end of the first World War it was the General Staff, so it is now the military leaders as such—again grouped together under the misleading collective term "General Staff"—who are clearly fated to suffer by the prejudice that they are possessed not of a soldierly but of a "militaristic" mentality. Literature and the press of the world declare with many voices that the German officer does not exercise his soldier's profession only as a duty, but that to him war—as the hub of all his planning and scheming—constitutes the highest value of all personal and national life. The American Chief Prosecutor defines this idea by saying that "war is a noble and necessary occupation for all Germans."

Such glorification of war has directed the mentality of the German officer corps for generations, it is asserted, exclusively towards aggression, conquest, domination, and violation of other nations. It may sometimes be difficult to refute prejudices—but to prove this slogan to be unfounded nonsense is fairly easy. The attitude and mentality which find its characteristic expression in the General Staff are known to have been created by men like Frederick the Great, Scharnhorst, Moltke, Schlieffen, and Seeckt. If we search the life and the writings of these men for evidence of a militaristic spirit, the result is distinctly negative. Hardly ever did a monarch meet with such enthusiastic praise as Frederick the Great found from the Englishman, Thomas Carlyle, and the American, George Bancroft, who says, in his *History of the United States*, that Frederick the Great did not contribute less to the freedom of the world than Washington and Pitt. Helmut von Moltke, who formed the personality of the German General Staff officer as no one else before or after him, expressly calls war, "the last means of safeguarding the existence, the independence, and the honor of a State." He also declared: "It is to be hoped that this last means will be applied ever more infrequently with our progressing culture. Who would wish to deny that every war, even a victorious one, constitutes a misfortune for one's own nation, because no territorial aggrandizement, no war reparations amounting to billions, can replace the loss of life and offset the grief of mourning families."

Von Moltke's most famous successor, Count Schlieffen, was the author of the often misinterpreted slogan: "To be rather than to appear," which requires of every General Staff officer modesty, quiet work, and absolute renunciation of appearance before the public. Is it possible to express more strikingly in a few words the

fundamental difference existing between this mentality and that of the National Socialists?

When in 1914 the German General Staff started on its crucial test, it was directed by the younger Moltke, a man of resignation, who as an anthroposophist was even further removed from militaristic conceptions than any of his predecessors. As regards General Von Seeckt, the creator of the Reichswehr, his principles as laid down in his programmatic essay *Statesman and General*, published in 1929, are such that this essay might, without substantial alterations, be immediately included in any handbook for British, American, or French officers.

To conclude this survey, allow me to quote from the memoirs of Field Marshal Von Mackensen, who was a man who must be considered, together with Hindenburg, as the chief representative of William II's officer corps. On the day when he gave orders for the great break-through in the battle of Gorlice—that was on 28 April 1915—he wrote the following lines:

> "Today my expectations center around a murderous battle... It is expected of me that I should win a great success, but decisive and great successes in war are mostly achieved at the cost of considerable losses. How many death sentences does my order of attack involve? It is this thought that weighs heavily on me whenever I give an order; but I am myself acting under order, driven by unavoidable necessity. How many of the strong and healthy boys who marched past me yesterday and are today on their way to the front lines, will lie dead on the battle field within a few days... Many of the radiant pairs of eyes into which I was able to look will soon be closed forever... That is the reverse side of a military leader's job."

These, therefore, are the facts: How little do the leading men among the German generals correspond to the picture drawn of them by an envious, biased, or uninformed propaganda in the world. To correct this erroneous picture, is, I think, a duty which I have to fulfill in this unique Trial of historic importance. Has the German officer corps, and in particular, have the German generals changed since 1933? Have they, under Hitler, become disloyal to their teachers and drifted into a "militaristic" backwater? Has the spirit of a Moltke, of a Schlieffen, of a Seeckt become extinct in them? Have the generals turned to a criminal Nazi plan and taken an active part in it? I believe that the facts speak a language of sufficient clarity.

The "common plan," the "conspiracy," with the object of an extension of power destined finally to lead to aggressive war, was

at first and primarily, as the Prosecution emphasized again and again, aimed at the subjugation of Germany itself, at the extermination of all elements of opposition in its own people. In this process, so the Prosecution alleges, the facts and experiences required for the planned subjugation and extermination of other nations were to be gained. Such an all-embracing plan, however, would under all circumstances have been conditioned by an inner agreement of the military leaders with these alleged objectives and principles.

What were the facts? Relations between the officer corps and the Party were anything but good. When the Party was entrusted with the leadership in all spheres of public life as well as in the creation of a totalitarian control of trade and industry, the officer corps was devoid of all influence. The officer corps participated in no political decisions. Excesses of high Party officials, terrorist methods of the Party, action against the Jews, the political education of the young generation, and the anti-Church attitude adopted by the Party under the leadership of Himmler and Bormann, were sharply rejected. The attempt of the SA to take the place of the Armed Forces, and that of the SS to constitute a second Armed Force in addition to the Wehrmacht, met with the strongest opposition.

This was the typical attitude of the military leaders. Where, then, was that ideological foundation which alone would have rendered common planning possible? Hitler's personality excluded every plan and every conspiracy under, beside, or with him. As regards the military leaders, there was no room, constitutionally or practically, for the pursuit of political aims or political plans. Beyond that, warnings arose from among the indicted officers against the policy pursued since 1935, which later on proved to be a *va banque* policy. The Chief of the General Staff risked his position and his life to call a halt to the fateful actions of a head of State who was resolved to go to the last extreme. From among the same quarters, a *coup d'état* was finally attempted right in the middle of the war. Is there anyone who can still seriously assert that the mentality of these men, their planning and their scheming, was directed only toward war and to nothing but war, and to the assistance of a policy having a war of aggression as its purpose? If the Chief of the American General Staff, General Marshall, whose sources of information were no doubt excellent, in his reports to the American President gives expression to his conviction that there existed no common plan between the General Staff and the Party, but that on the contrary sharp differences often arose between the two, this is certainly an important and conclusive testimony to which I need add nothing more.

I am now coming to the section of the Indictment according to which the military leaders as a whole are said to have deliberately, consciously, and treacherously committed the crime of planning and executing a war of aggression.

The serious legal objections to characterizing a war of aggression as a crime under the Kellogg Pact have so often been dealt with by the Defense that I can refer to them. I wish to point out particularly the arguments put forward by Professor Jahrreiss, and in this connection I should only like to direct the attention of the Court to the fact that the men represented by me are neither politicians, nor statesmen, nor experts of international law, but merely soldiers.

Should we require of the soldiers of a country something that, during the preceding 20 years, the diplomats and legal advisers of the League of Nations were unable to achieve? A soldier bases his judgment primarily on his surroundings. In at least three cases during the last decade, he noted that perpetrators of an alleged crime of a war of aggression were not persecuted. Neither after Italy's war against Greece, nor after the Abyssinian war, nor after the war of the Soviet Union against Finland, were the soldiers of these countries indicted before a Tribunal.

The fact always remains that soldiers simply plan wars, not wars of aggression. That the classification of a war has nothing to do with war in itself cannot be judged on defensive or offensive strategy, as the Prosecution itself admits. Even the Prosecution admits that it is permissible to prepare military plans (including plans for an offensive), to carry them out, and, finally, to participate in a war. The classification of a war as a war of aggression is a purely political opinion. The planning of wars of aggression by soldiers is thus only possible when soldiers enter the political arena. The decisive factor, therefore, is that an officer participating in such planning knew that he was concerned with a political plan for a definite war of aggression, that his war of aggression was an unlawful one, and that by his own participation he himself was committing an unlawful act.

Now, how does the history of the last years before the second World War present itself to the military leaders? The decisive point for the conclusions to be drawn as to guilt or innocence is not how after the war and defeat these events are today clearly recognizable in their past development, but how they appeared at the time to the typical German military leader.

Whenever the world has passed through the upheavals of great wars, the longing for eternal peace makes itself felt. This longing is strongest in the case of those who made the greatest sacrifices in the war. In the first World War, they were the German officers'

families from which the majority of the indicted military leaders come. Those who witnessed the death of their own young generation are not eager to sacrifice their own sons in a new war. And should precisely these men be inclined to start another war of aggression? It was not the waging of wars, but the education of youth to a decent attitude, to a clean mind, to honesty and comradeship, which was considered by the officer to be his real task.

The abolition of the Treaty of Versailles was not a specific objective of the German generals, but it was the obvious aim pursued by German policy as such. Reich Chancellor Brüning, who is certainly above suspicion, declared on 15 February 1932, that "the demand for equality of rights and equality of security is shared by the entire German nation. Any German Government will have to put forward this demand."

The endeavor to regain control of the lost German territories was not a matter for the generals alone, but was a common objective of all Germans, and certainly not an immoral one. I merely remind the Court of the same endeavors made by France with regard to Alsace-Lorraine after 1870-71. When Hitler definitely renounced Alsace-Lorraine before the German Reichstag, the German generals also considered this declaration as a political necessity, and were in perfect agreement with this manifestation of his will not to start a war. The wish for a modification of the eastern frontiers was generally supported by the German nation. The separation of Danzig from the Reich and the creation of the Corridor were considered intolerable by the whole of Germany—and, by the way, were severely criticized by Allied statesmen after 1918.

The union with Austria was, in the first place, an idea emanating from Austria herself. Its justification cannot be denied, if it could be realized voluntarily.

The soldier as a realist knew better than anyone else that these objectives could not be achieved through violence and war. But if the conquest of parts of Finland, of Poland, and of Bessarabia by the Russian soldier is not considered a crime, how can the German officer be reproached with pursuing as his aim the improvement of Germany's international position by peaceful methods? How can this attitude of the German officer justify the conclusion that he endeavored to reach this goal only by way of wars of aggression?

I can, therefore, sum up the situation as follows: The indicted military leaders, as a whole, did not want to put an end to the Treaty of Versailles in order to wage war, but only in order to give Germany equality of rights and security. They did not want to conquer half the world, but to rectify a frontier which was insupportable morally, militarily, and economically; they did not want to wage aggressive wars, or war in general, at any price, but they considered war in the same way as all soldiers of the world, namely, as a final irrevocable issue after all other possibilities have been exhausted. Now, the plan for a later war of aggression, according to the Prosecution, manifested itself already in rearmament and in the occupation of the Rhineland.

The Prosecution here again resort to the slogan of German "militarism," which they say existed independently, was older than the Party, and worked, even before the accession of the Party to power, along the lines followed by Hitler's later plans. But what was the actual military situation, say in 1935?

Germany had an Army of a maximum strength of 250,000 men including reservists, no modern arms, no guns of more than 105 mm. caliber, no Air Force, and entirely obsolete fortifications. The Navy had only 15,000 men, was not allowed to have ships bigger than 10,000 tons, and had no submarines.

The so-called frontier guard, which already infringed upon the military clauses of the Treaty of Versailles, was so insignificant as regards its organization, armament, and supply of ammunition, that it could be used only for defense purposes for a limited period; and its military value was equal to that of an

almost untrained militia. The "Black Reichswehr," which has been so extensively dealt with by foreign propaganda, was dissolved as early as 1923.

Now, as opposed to the poorly-armed Reich, there were: France, with 600,000 men in peacetime and 1,500,000 men in war; Czechoslovakia, with a war strength of 600,000 men; and Poland, with a war strength of 1,000,000 men. All these states were equipped with the most modern armament, they possessed an Air Force and armored formations.

Is there really anyone who could consider these modest and, measured by the requirements of a modern war, positively ridiculous German measures of rearmament, compared to the armaments of neighboring countries, as a preparation of, and the foundation for, ultimate wars of aggression?

In the same way, the whole mentality of the military circles of that period was exclusively directed towards defense. The aim pursued in the training of the troops was the formation of subleaders in sufficient number to expand the Army threefold in the case of a conflict. This would, at best, have been just sufficient to ward off one of the possible enemies. In battle training, the main subject was delaying resistance. In the same way the training of officers exclusively provided for defense and the temporary stoppage of an enemy attack—in the majority of cases, only inside Germany. As for the war-time organization, involving an approximately threefold expansion of the Army in the case of war, to take effect as from 1 April 1930, the available stocks of arms fell far short of actual requirements. Until 1935, there was no planning of deployment.

It cannot be objected that even these modest preparations were absolutely superfluous even as defense measures since nobody was threatening Germany.

It was only under strong Anglo-American pressure that France had renounced the left bank of the Rhine. Czechoslovakia claimed the Glatz mountain district and the Lausitz region. In Poland the annexation of Upper Silesia was openly demanded. Where is there to be found as much as a trace of German "militarism" as a precursor and advance planner of Hitler's schemes of aggression? The officers of that period worked only in a spirit of peace and humanity, in order to render defense possible in the case of an enemy attack.

The military leaders had no part in the political events of the years from 1935 to 1937, namely, the actual abolition of the Treaty of Versailles, the withdrawal from the League of Nations, and the declaration of Germany's armaments sovereignty. The military leaders believed in Hitler's declaration that the territorial frontiers laid down by the Treaty of Versailles would be respected, and the Locarno agreement observed, just as the whole German nation and the rest of the world believed in these statements. The points which the Prosecution omits because they do not fit into the picture of conspiracy built up by them, namely, the renunciation of Alsace-Lorraine, the treaty with Poland, and the Naval Agreement with Great Britain, were interpreted by the soldier as the end of the "Nightmare of Coalitions." Only the increasing estrangement from Russia was looked upon with misgivings. The reoccupation of the Rhineland was to the soldier a morally perfectly justified move resulting from Germany's position as an equal and sovereign state. In spite of this, the Commander-in-Chief of the Army gave such an emphatic warning that the number of garrisons posted on the left bank of the Rhine was limited to only three battalions.

The indicted military leaders as a whole had no influence on the course of developments. In fact, they themselves were surprised by them. If in all those years Hitler's moves were tolerated by foreign countries and recognized at least *de facto*, then the reason may be, as Justice Jackson believes, that these foreign countries had "weak governments." But the fact remained that there was international recognition. If even foreign countries failed at that time to recognize all these developments as the "beginning of the execution" of wars of aggression, how could the German military leaders as a whole possibly have been aware of such plans on Hitler's part?

The military expert will find his last doubts about the intentions of the military leaders removed when he looks into the military plans of that period, which contained nothing but directives for defense. In that respect, the final address made by General Beck to a circle of high-ranking officers at the conclusion of an operational task concerning the subject "War with Czechoslovakia" may be considered as characteristic. In this address he spoke with great seriousness of the results of the preceding studies and stressed the fact that although Germany would be able to defeat the Czech Army within a few weeks, she would subsequently not be in a position to offer any serious resistance to the French forces which would, in the meantime, have crossed the Rhine and invaded Southern and Central Germany; so that the initial success against Czechoslovakia would bring in its wake a formidable catastrophe for Germany. These arguments can certainly not be interpreted as indicative of the German generals' lust for war, nor for their approval of Hitler's possible plans of aggression.

In the following period, the German military leaders likewise earnestly repeated that German policy, whatever its aims might be, should never create a situation which would lead to a war on two fronts. In view of the numerous mutual assistance pacts, guarantee obligations, and alliances among all the neighbors of Germany, this attitude excluded, as a matter of principle, any idea of waging a war of aggression.

History has justified the opinion held by the generals. Hitler disregarded their warnings, and exclaimed in indignation: "What sort of people are these generals, that I as head of the State should have to drive them to war? If things were as they should be, I would not know where to turn from their clamorings for war!"

Only those who do not desire to see the truth can overlook these facts. If ever there was unanimity among the military leaders, it certainly did not exist with regard to the planning of wars of aggression, although, based on the very sober realization of the dangers and consequences of any war for Germany and the world, agreement did exist in the rejection of such plans of the head of State.

Hitler, the man who thought he knew best, considered these men unsuitable as "participants" in his plans, and dismissed them. Nor did he consider any other officer from the so-called "circle of conspirators" suitable to become the Supreme Commander and the future participant in possible plans, so that he personally assumed Supreme Command of the Armed Forces, and thus became their immediate military superior.

The expressions of his will and his directives to the Armed Forces now took the character of military orders. Although protests

were still possible, nothing remained but the duty of the subordinate to obey if he who gave the orders abided by his opinion. This, I imagine, is a principle governing all armies of the world.

At this point, I must refer to a document which the Prosecution has particularly stressed as proof of the plans of the "criminal organization." I am referring to the so-called "Hossbach minutes," dealing with the meeting of 5 November 1937. What actually did happen?

It was not an "influential group of Nazi conspirators meeting Hitler to consider the situation," but Hitler, in his capacity as head of the State, had convened some military leaders and the Foreign Minister for a meeting. He developed his own ideas. He began by declaring that the problem of Austria and Czechoslovakia must be solved between 1943 and 1945; then he referred to the Poles as possible aggressors. There was no question of settling the Corridor problem, or of conquests to be made in the East, and similar subjects.

As regards the reliability of these minutes, Affidavit Number 210, deposed by General Hossbach, which I have submitted to the Court, clearly shows that Hossbach did not take down the actual text of the speech while it was being made, but wrote an account of it from memory a few days later. Everybody knows how easily mistakes liable to distort actual events can occur whenever records are made subsequently, because the writer employs his own words or leaves gaps where his memory fails him.

The following at any rate is certain:

(1) The Reich War Minister and the Commander-in-Chief of the Army not only did not agree to any warlike plan, but pointed out in all seriousness, and with due emphasis, the danger threatening from Britain and France, referring at the same time to Germany's weakness.

(2) Whatever may have been the meaning of Hitler's speech, none of the other military leaders were informed of the ideas expressed by Hitler at that meeting. General Von Fritsch did not even inform his successor of them when he obtained his discharge.

(3) Even if some individual officer had gained knowledge of the subject of this conference, no conclusions can be drawn from this fact against the bulk of the military leaders. If Hitler envisaged war in six or eight years, that was no reason to worry. During such a long period numerous political solutions would still be possible. Nor was it possible to recognize Hitler's true ideas from this speech any more than from any of his other speeches.

(4) The few officers present at the meeting were bound to draw from his speech at least the positive conclusion that Hitler himself was contemplating definitely peaceful development until 1943.

Where, therefore, is the proof of participation by the generals in Hitler's plans?

Again, the Prosecution is endeavoring to draw conclusions as to the attitude of the generals towards the entire plan from their reactions to the union with Austria and to the Czechoslovakian question. The special emphasis which was laid on the participation of some officers in the conference held between Hitler and the Austrian statesmen on the Obersalzberg in February 1938 is particularly well illustrated by the words which Hitler spoke some time later: "I selected my most brutal-looking generals to appear as supernumeraries in order to demonstrate the seriousness of the situation to Schuschnigg."

The actual march into Austria and the occupation of that country were political actions, the background of which was unknown to the generals. The officer only saw that when his troops marched into Austria they were everywhere showered with flowers and enthusiastically welcomed by hundreds of thousands of people, and that not a single shot was fired.

The deployment plan "Grün" against Czechoslovakia, to which the Prosecution refers, was not a consequence of the meeting of 5 November 1937, but constituted a purely precautionary measure contemplated in the event of a war with France, and was already in the hands of the General Staff on 1 October 1937; that is to say, before the meeting of 5 November. Although in this case too an agreement was reached which provided for the entry of the German troops, the Chief of the German General Staff, General Beck, in a memorandum drawn up with the approval of the Commander-in-Chief of the Army, warned against a policy which might lead to armed conflict. In this memorandum he emphasized that any war launched by Germany in Europe must ultimately lead to a world war and to a tragic end for Germany. General Beck was dismissed. When Hitler turned directly to the chiefs of the general staffs of the armies on 10 August 1938, obviously hoping to overcome the resistance of the older commanders-in-chief with the help of the younger generation, the objections raised by these younger officers were such that he became even more suspicious of the generals. Where, then, was the enthusiasm of the generals for Hitler's plans? Where was their participation in them?

Hitler's constantly changing utterances in the Sudeten question made it all the more impossible for the military leaders to realize that he might seriously be planning a war. On 5 November 1937 he declared that he would settle the Czech problem between 1943 and 1945. On 20 May 1938 he declared in a military directive: "I do not intend to smash Czechoslovakia in the near future by military action without provocation." On 30 May 1938 he issued a directive

to the Armed Forces in which he said: "It is my unalterable decision to smash Czechoslovakia by military action in the near future." On 16 June 1938 he said in another directive: "The immediate objective is the solution of the Czech problem by my own free decision." On 24 August 1938 he specified that an "incident" in Czechoslovakia must be the prerequisite for a German attack. On 16 September 1938 the military preparations began at the frontier. But political negotiations were opened simultaneously. On 1 October 1938 the territories ceded were peacefully occupied in accordance with the political agreements. The Protectorate was occupied as a consequence of a purely political action; the military leaders merely received the order for a peaceful entry.

When in December 1938 a written order to the Army High Command decreed that the Army was to devote itself until 1945 exclusively to the tasks of its organization, structure, and training, and that it was to abstain from any kind of preparations for a war, including preparations for the defense and safeguarding of the frontier, the military leaders gained the firm conviction that a peaceful development had been secured. Which of these events was to permit the conclusion that the military leaders had participated in a general plan directed toward a war of aggression? In each case the military leaders did nothing but execute their purely military orders after political decisions had been made.

The political development which led to the war with Poland has been sufficiently dealt with in this Trial. It merely remains my duty to explain how this development appeared in the eyes of the military leaders. How were the relations between the generals and Hitler at that time? He was the Supreme Commander of the Armed Forces. In other words, he was their immediate military superior. Their political objections had everywhere been refuted by events; in the case of the occupation of the Rhineland, in connection with the union with Austria, in the Sudeten problem, and on the occasion of the creation of the Protectorate.

It is easy, from our present knowledge of things, simply to deny these facts, but in those days the belief in Hitler's political ability was a tangible reality for the majority of the German citizens and soldiers. After all, he had achieved all his successes only by political means, not in a single case by war: To realize that he would risk a war, a war of aggression with Poland, the military leaders would have had to be crystal-gazers. How were they to perceive his aims? The Foreign Office was prevented from informing them of the political situation. Neither as individuals nor as a group were they able to participate in political decisions. The proposals made by the German Foreign Minister to the Polish Ambassador in October 1938, the conferences between Hitler and

the Polish Foreign Minister himself, could only be judged by the soldiers as attempts at a political settlement of the Polish problem, but never as an indication of an intended war of aggression.

The first military directive of April 1939 amounted to nothing more than the preparation for an "eventuality." If a military leader considered the situation realistically, the assurances of British and French help for Poland were bound to make the idea of a war of aggression against Poland appear absurd.

The conference held on 23 May 1939 was a unilateral speech addressed by the Supreme Commander to the military leaders he had summoned. When Hitler declared, in the course of his address, "I would be an idiot to blunder into a world war on account of the lousy Corridor problem like the inefficient statesmen of 1914"; and when, in reply to an observation made by Field Marshal Milch that the production of heavy bombs was quite inadequate in the event of a war and must immediately be increased, Hitler said that there was ample time to take steps in that matter, the military leaders were bound to conclude from this that Hitler had made military preparations only to support the initiated political moves, but that he would on no account run the risk of armed conflict with Poland.

Nor was the conference held on 22 August 1939 a consultation with advisers, but an address by the Supreme Commander directed to the military leaders whom he had called together. When Hitler said in his speech, "We have no choice; we must act," he did not indicate how he intended to "act." At any rate, the military leaders were by no means under the impression that a war against Poland had been decided upon. On the contrary, the obvious relief with which Hitler announced that a trade agreement had just been reached with the Soviet Union impressed all those present at the meeting with the firm belief that he would find a diplomatic solution in the Polish question, too.

Until then, Hitler had always masterly seized the right opportunity. No one ever used bluff with greater virtuosity than he did. Bluff and military pressure, however, are recognized instruments of politics. It is quite wrong to conclude that a man who practices or supports one or the other of those methods thereby also approves of a war of aggression. If Hitler had really conceived the plan for an aggression against Poland at some earlier date, the military leaders were not even able to recognize this plan as such. In the last analysis, they themselves were "bluffed."

But what were they to do once the die was cast? Were they to declare, "We cannot do this," or were they to refuse to obey? They had to do their duty. They were in exactly the same situation as the Russian army commanders who entered Poland a few days

later upon orders from Stalin. Once the war had begun, the words of Napoleon carried weight with the military leaders:

"You must remember, Gentlemen, that in war obedience comes before courage."

However, the Prosecution holds the military leaders responsible not only for the outbreak of the war, but also for its prolongation and for its conduct in general. The political and military reasons which have led to the prolongation and the shaping of the events of the war have been so often and so fully examined in this Trial that I must refrain at this juncture—particularly in view of the limited time at my disposal—from reopening this matter for a general survey.

As regards the military leaders, the political background of the second World War presents itself clearly as the consequence of the conditions created by the Treaty of Versailles. Thus it seemed to them that in the last analysis the German action against Poland was morally justified.

The war in the West was the last thing which the German generals desired. When Britain and France declared war, this was certainly not a move which was welcomed by the German military leaders. The prolongation and extension of the war can no longer be considered as resulting from free decisions or preconceived plans. The necessities arising from a life-and-death struggle, once a war has broken out, dictate to every nation the road which it has to follow. Under the circumstances, a soldier is nothing but the sword which must strike and the shield which must receive the blows in order to prevent the death of his own nation.

The evidence produced in Raeder's case has made clear beyond doubt the considerations that guided the group of officers who prepared the occupation of Denmark and Norway. We know that in this case Germany forestalled an Allied action by a very narrow margin. If the Commander-in-Chief of the Navy himself was convinced that it was absolutely necessary to avert the very serious dangers which threatened Germany, how, in these circumstances, could the troop commanders who are members of the so-called "group" have been persuaded that there was no reason to fear such grave danger? Would the Allied chiefs of General Staffs and field commanders have had a right or an opportunity to refuse to embark their troops, which was done for the same purpose before the German action was undertaken? Moreover, only a limited number of military leaders had any knowledge of this action at all. All the other officers covered by the Indictment only heard on the radio that the operation had been undertaken. How can they be accused of taking part in planning aggression against these countries?

The reasons for the Western campaign and its prerequisites have also been discussed conclusively. The attitude which the generals adopted in this case constitutes a particularly striking refutation of the assumption made by the Prosecution. The Army High Command itself strongly objected to Hitler's decision to launch an attack in the West, particularly because of the intended violation of neutrality. The clash with Hitler was so serious that in his address to the commanders-in-chief on 23 November 1939 he directed exceptionally bitter attacks against his generals; he accused them of being ignorant of foreign political questions and referred to them as an "obsolete upper class which had already failed in 1914." That very evening the Commander-in-Chief of the Army sent in his resignation which, however, was not accepted.

Thus the Army High Command sharply opposed Hitler's plans. There were serious clashes between Hitler and his generals, and finally the Commander-in-Chief of the Army asked for his release. What else could have been expected of the generals? Ought they to have decided upon mutiny in the face of the enemy? Even such an action would have failed completely to produce any effect, owing to the strong position which the victorious Hitler occupied at that time in the German nation. Beyond that, the Army High Command, still hoping that there might be possibility of peace, delayed the beginning of the attack until the spring of 1940. Although from the legal point of view the advance through Belgium and Holland constituted an objective violation of neutrality, the military leaders were bound to consider this action as necessitated by the requirements of war and as justified by the information they had received concerning the threat of violation of neutrality on the part of the Allies. This was all the more true because they had no general knowledge of the political situation and no influence at all on the decisions to invade these countries.

The reasons which led to the German action against Yugoslavia and Greece have been sufficiently clarified in the evidence obtained from Göring, Keitel, and Jodl. The war against Greece was a logical consequence of the action which Italy had taken on her own; the war against Yugoslavia was a result of the sudden *coup d'état* in Belgrade. As to the military leaders, they did not even consider a war in the Balkans, much less assume responsibility for it.

The military leaders had not contemplated the possibility of an entanglement with Soviet Russia in any way at the beginning of the war; nor did they make any preparations for such an eventuality. The Army High Command did not even possess the necessary maps! When Hitler subsequently induced them to make such plans, he justified this by the necessity to forestall a threatened intervention by Russia. Russia's action against Finland, the Baltic states,

and Bessarabia appeared to confirm the correctness of this opinion. Reliable information about strong Russian troop concentrations were to them a further indication of a threatening danger. The evidence given by Field Marshal Von Rundstedt and General Winter shows that the German attack ran into strong Russian preparations for deployment, which contributed substantially towards confirming in the minds of the military leaders the conviction that Hitler had been right in saying that they were engaged in a genuine preventive war.

The ground organization of the Soviet Air Force had been advanced so close to the frontier that this fact alone necessarily led to the conclusion that it was Russia's intention to attack. 10,000 Soviet tanks, 150 Soviet divisions, and an increase from 20 to 100 air fields in Eastern Poland alone were reported at the time. If the military leaders under these circumstances considered that Hitler's decision to wage a preventive war was justified from the military point of view, then their participation in this war in the execution of their duties as soldiers was certainly no crime.

The military plan known by the code word "Barbarossa," which the Prosecution considers as a plan for a war of aggression, had been contemplated until the last moment merely as a possibility, as a precautionary measure in case the Soviet Union should change her attitude. Even after February 1941—apart from the high-ranking officers of the OKW and OKH and the Commander-in-Chief of the Air Force—only 18 out of the 129 indicted military leaders had heard of this plan at all, and then only as a plan to be used if the need arose. The Commander-in-Chief of the Army, Field Marshal Von Brauchitsch, had warned Hitler with regard to this possibility by referring to serious military objections; but the majority of the officers concerned only learned of it immediately before the beginning of the war—when the die had already been cast—through the orders given them.

How could the 18 officers who heard of this plan have effectively and successfully opposed Hitler's intentions? The reasons indicated by Hitler justified the war. To wait until the Soviet threat became a real attack, would necessarily have led to the destruction of the Reich as far as could be judged from the military point of view. The other military leaders had no possibility at all of rejecting Hitler's decision.

The beginning of the war against the United States has also been discussed already. War was declared without previously obtaining the opinion of the supreme military leaders. If even the Army High Command was confronted with the accomplished fact, how could the other military leaders have had any knowledge of Hitler's intention to begin this war? As regards the Navy, which

could only play a part in waging this war as long as the land or air forces of the United States did not intervene in Europe or Africa, it is a fact that hostilities had practically been opened before the declaration of war by Roosevelt's order to fire, although the German forces strictly respected the 300-mile limit, unjustified though it was under international law. Evidence in the case of Raeder and Dönitz has clearly shown that all directives emanating from the High Command of the Navy were intended to avoid a conflict with the United States under all circumstances.

I am now coming to the conclusion of this chapter: What responsibility have the 129 indicted officers as a group in the extension of the war?

I believe that they have no other responsibility than that which is borne by every soldier who fights in a war for his country on the spot where he is ordered to fight.

THE PRESIDENT: The Tribunal will adjourn for 10 minutes only.

[A recess was taken.]

DR. LATERNSER: I now come to the chapter "Crimes against the Rules of War and against Humanity." The accusation that the military leaders concerned took part in the planning and the execution of a criminal total war, in particular also in crimes against enemy armies and against prisoners of war, as well as against the population in the occupied territories, affects the German generals with particular severity. These generals are not concerned with minimizing any possible guilt of their own, but with establishing the historic truth. If we wish to form a just opinion of the terrible events of the last World War, we must realize that actions and deeds of individuals and nations are not merely the outcome of a free will or of bad or good faith. They are the result, on the contrary, of the mental and spiritual forces at work in our epoch, and no one can avoid these influences.

As early as the beginning of the 19th century the nations had to face the problem of power in all its forms. The various doctrines, the materialistic conception which generally prevailed after the second half of the 19th century, and finally the excessive nationalism noticeable on all continents, were phenomena which—irrespective of whether they were good or bad—did not fail to influence the attitude and actions of the nations. Although these ideas did not necessarily have to lead to the results with which we are faced today, they are in the last analysis the intellectual starting point from which originated the second World War with all its consequences. There is another aspect which must not be overlooked in

any just evaluation of the general trend of events, in particular as regards the formidable sacrifices of human lives, and that is the de-personalization of men, which is due to a development noticeable in all civilized nations, and which has been called "massification." The more the nations multiplied, the lower, unfortunately, did the value of the individual sink. But, above all, technical progress contributed considerably to this de-personalization. If modern technology supplies man with the means of destroying tens of thousands of human lives in one blow, if air raids cause 200,000 deaths in one single night, as at Dresden, if one or two atom bombs are sufficient to kill a hundred thousand men, the value of men must necessarily sink. The same phenomenon made its appearance in the first World War as in the Russian Revolution and in the Spanish Civil War. The German military leaders struggled against this development, but as children of their epoch it was just as impossible for them to avoid the influence of the spirit of that epoch as it was for the soldiers of the other countries.

The second World War, however, was not only a purely military war, but in addition it was in its effects predominantly an ideological war. In any clash of ideologies the struggle becomes a struggle of annihilation, a total war. Ideological wars have always demanded streams of blood and were accompanied by unimaginable atrocities. The religious wars and the sacrifices and cruelties of the great revolutions are outstanding examples. Thus the second World War as a conflict of ideologies was conducted on both sides with such vigor and perseverance that it finally led to the full utilization of human and material resources of every nation. In other words, it produced "total war" in the truest sense of the word. If, beyond that, the term "total war" was extended by the politicians on both sides to mean the total destruction of enemy ideology, this shows what an ideological conflict involves.

What was the attitude of the generals to this problem? The group of generals covered by the Indictment consisted exclusively of men who had chosen a soldier's profession as their career. They were mature men, with experience of life, who had not put on a soldier's uniform only under the National Socialist regime; but it is precisely the mature man who has a stronger sense of tradition, justice, and law, than a younger one.

Thus, soon after the outbreak of war it became manifest also in this instance that the military leaders did not in any way agree with Hitler's revolutionary ideas on the methods of warfare and refused to make these ideas their own. The generals were firmly resolved to conduct the war according to the old traditions, which implied strict observance of the rules of warfare. The reproach directed against the generals by Hitler in November 1939 in regard

to their "obsolete conception of chivalrous warfare," is quite significant. That this attitude of the generals did not change subsequently is shown by the fact that in the later course of the war a great number of the indicted generals were relieved of their functions on account of this attitude, in spite of their military successes.

Three Field Marshals have appeared as witnesses before the Tribunal. Did anyone gain the impression that these men were criminals and had committed crimes against the rules of war and against humanity? Those officers knew from their experience during the first World War that any violation of the rules of war would ultimately always turn against the soldiers of their own army. Until the last moment they conducted the war against the armed forces of the enemy in accordance with the rules of war. The generals took the same attitude in regard to the civilian population and the administration of the occupied countries.

The military leader who is responsible for operations at the front has one primary concern, namely, that quiet and peace should reign in the rear areas. This alone will induce him to avoid anything that may cause unrest among the population. He knows only too well that all unnecessary measures of compulsion only lead to hostile reactions which in turn bring about intensified reprisals which can only produce rebellion. If one has no faith in the soldierly honor and in the Christian mentality of the military leaders, one might at least believe that sound reason caused them to treat the population of the occupied territories in accordance with international law, to spare their private property and to assist them as far as possible in their peaceful work.

On the other hand it is obvious that open resistance in the rear of an army cannot be tolerated, and that in such cases the military leaders must take appropriate countermeasures. The threat of severe punishment by the Allied Military Governments in the case of any rebellion or possession of arms in Germany, even now after the end of the struggle, also proves this.

As a consequence of the double aspect of the second World War—the military on the one hand, and the ideological on the other—the conduct of the war, from the highest levels immediately below Hitler down to the lowest executive organs, was sharply separated. The Armed Forces were concerned with the purely military conduct of the war, while anything connected with the parallel ideological and political struggle was entrusted to political agencies and their executive organs.

Thus, contrary to former custom, those parts of the enemy country which had been conquered by the Armed Forces were, as a matter of principle, withdrawn from the territorial control of the commander-in-chief immediately after occupation, and placed under

the authority of the representatives of the political leadership. Therefore, anything in the nature of possible crimes which may have been committed in territories not under the territorial control of the indicted group of persons must be excluded in this Trial as far as the question of the responsibility of the so-called "group" is concerned.

The Protectorate, the Government General of Poland, Norway, Belgium, and Northern France, the remainder of occupied France, Luxembourg and Alsace-Lorraine, Croatia, Yugoslavia and Greece, Slovakia, Hungary, and Italy were not placed under the territorial authority of the military leaders.

In the Soviet Union, the area of operations had from the very outset been limited as narrowly as possible by Hitler's order and therefore it comprised only the territory within the immediate sphere of military operations until finally territorial control was limited to the immediate combat zones, that is to say, to the area roughly 10 kms. behind the first front line. Outside this strip of land the territories were placed under the administrative authority of political agencies. Charges directed against the "military commanders" or "Wehrmachtsbefehlshaber" appointed in the individual countries and territories are irrelevant in this connection, because these officers are not included in the Indictment. This organization of the administration shows that Hitler, as a result of his distrust for the military leaders because of their attitude to the questions of warfare and humanity, had quite consistently entrusted the execution of the ideological and political struggle to the political agencies and their executive organs.

The commanders-in-chief, therefore, held territorial authority locally only insofar and as long as any particular area in enemy territory was part of the area of operations, and consequently their responsibility was limited in accordance.

But even inside the operational areas, all tasks not immediately connected with the operations themselves were withdrawn from the influence of the Wehrmacht and put under the responsibility of completely independent political agencies. This included, for instance, all measures of a political and police character, the economic exploitation of the occupied territories, measures pertaining to the realm of culture, and manpower problems. Apart from the purely military operations on the front line there remained therefore as the task of the commanders-in-chief only military security and the establishment of local administration within the areas of operation.

Moreover, they were kept so busy in the areas of operation with the tasks connected with the conduct of operations, the supplying of their troops, and military security, that it was hardly possible

for them to concern themselves with other tasks. It was their duty to be with the units under their command in the area of operation. Their planning and their care had to be devoted first and foremost to the unceasing struggle, and to their troops. Those facts supply the simple explanation of why it was possible to keep so many things and measures connected with other non-Army agencies a secret even in the areas of operation, and why they did not come to the knowledge of the military commanders.

The Waffen-SS units were subordinated to the commanding authorities of the Wehrmacht as combat units, exclusively for fighting purposes and as regards their supplies. Regarding their organization and personnel, both from the point of view of discipline and jurisdiction Reichsführer SS Himmler alone had authority to give orders. All other organizations of Hitler, such as the Einsatzgruppen, Police, SD, Organization Todt, *et cetera,* received their instructions and directives exclusively from their own superior authorities, not from the commander-in-chief of the operational sector. This regulation of authority and division of responsibility practically limited the commanders-in-chief to directing the troops under their command in the area of operations.

After having thus clarified the sphere of responsibility of the military commanders, I now propose to turn to some special topics, and by way of introduction I might say, concerning the documents used by the Prosecution, that extracts from German directives taken from their context often fail to reveal the real meaning of the directives and lead to wrong conclusions. Other documents, in particular some of those presented by the Russian Prosecution, represent findings of certain commissions. No one can check the figures contained in these documents, for instance concerning murders, particularly since all specifications concerning the exact time when these crimes were committed and other substantial data are missing. The actual number of dead does not, in itself, prove that these dead were murdered by Germans.

Thus the seemingly crushing evidence of the Prosecution melts away upon closer inspection, particularly when we consider that these data were collected by numerous commissions in all countries, and from hundreds of witnesses, over a period of several months, and that they include events which occurred not in one small area placed under the authority of a commander-in-chief, but in vast territories and over long periods.

In spite of great difficulties which the Defense had to overcome in the collection of their evidence, I was able to submit to the Tribunal very comprehensive Defense evidence together with observations and comments which I made so far as I was given an opportunity. As I am again working under a time limit, it is

impossible for me to exploit fully even part of this counterevidence. I therefore propose to select only a few individual cases to which I attribute special importance.

There is the Commissar Order, which plays an important part, and which provided for the immediate shooting of political commissars. When Hitler first orally announced this order which he alone had planned, in March 1941, he at once met with the strongest inner opposition on the part of all the generals present, arising out of their soldierly and human attitude. When all endeavors by the generals, the Army High Command, and the Armed Forces High Command to prevent the issuing of this order by Hitler had failed, and the Commissar Order was issued some time later in writing, the commanders-in-chief of the army groups and armies either did not pass this order on to their troops at all, or ordered on their own authority that it should be circumvented. They did so in full consciousness of the danger that they might be heavily punished for open disobedience in war to an order of the Supreme Commander. The order on the preservation of discipline issued by the Commander-in-Chief of the Army in pursuance of the Commissar Order, had the desired effect. It gave the commanders-in-chief at the front a loophole to act in accordance with their own conception. Thus the military leaders achieved the result that the Commissar Order was not generally executed within the army groups and the armies. Ultimately, it was rescinded upon the energetic representations of the Chief of the General Staff, Zeitzler.

THE PRESIDENT: Is there any evidence in writing of that rescinding?

DR. LATERNSER: Yes, Mr. President. That part of the evidence is contained in the affidavits which I have presented, and the last paragraph I read can be proved by Document 301-B.

THE PRESIDENT: You mean that there was, in writing, an order by Chief of General Staff Zeitzler rescinding the order?

DR. LATERNSER: I think I have been misunderstood, Mr. President. According to the last paragraph which I just read, the Chief of the General Staff, Zeitzler, as a result of his counterreports, was successful in persuading Hitler to rescind the order. This is proved by Document 301-B, which I have presented to the High Tribunal and which is available in a translation.

What more can be expected of the military leaders? The order did not emanate from them, they did not pass it on, they did not execute it, they endeavored to have it rescinded, and finally reached their objective. Herein lies their solidarity and their unanimity, and precisely the handling of the Commissar Order is evidence of the most conclusive kind that the generals' attitude was beyond reproach.

In the same way, the directive concerning the restriction of the administration of military justice in the East met with the opposition of the commanders-in-chief, who were present when it was orally announced. It is due to the generals' negative attitude that Hitler gave up his original plan, which provided for a complete elimination of the administration of military justice in the East, and was content with certain restrictions.

In this connection, too, the additional directives issued by the Commander-in-Chief of the Army concerning the maintenance of discipline are of the greatest significance. The commanders-in-chief of the army groups and of the armies acted as a group in accordance with the provisions of this additional order and took vigorous measures in all cases where members of the Armed Forces had committed offenses against the civilian population. In serious cases they had death sentences passed and executed. Even simple road accidents in which Russian civilians were injured were brought before military tribunals, and the persons responsible were taken to account. This is proved, among other things, by the evidence given by Field Marshal Von Leeb. Here again, therefore, precisely the officers included in the Indictment took steps to prevent the full execution of one of Hitler's orders, which was in contradiction to their own principles.

The attitude which the military leaders adopted with regard to Hitler's Commando Order was so unfavorable from the very outset, that Hitler was not only compelled to draw up this order personally, but also found it necessary to threaten exceptionally severe punishment if his order was not executed. And still the commander-in-chief in Africa, Field Marshal Rommel, destroyed the order immediately on receipt because of his inner opposition to it. The commander-in-chief in the West, Field Marshal Von Rundstedt, took steps to see to it that the order was not carried out but circumvented. The commander-in-chief in the Southwest, Field Marshal Kesselring, issued additional regulations which ensured treatment of Commando troops as prisoners of war. As regards the Eastern theater of war, the order was without significance anyway. These examples clearly show that here again the military leaders found ways and means to prevent the execution of the Commando Order which was in contradiction to their soldierly conceptions.

The individual cases mentioned by the Prosecution should be left out of account in this connection, since they are concerned with individual acts which have already been the subject of special investigations, or will be investigated later. But they do not in any way reflect the typical attitude adopted by the military leaders, which alone is relevant in this Trial.

It seems to me that the following questions are also of importance; could not the military leaders rely on the facts contained

in this order being true? Were they not bound to assume that the order had been examined, in its relations with international law, before it was issued? Is this order absolutely inadmissible under international law? Does it still come under admissible reprisals? That will be a matter for the Tribunal to decide, if it attributes some importance to this order of Hitler with reference to the persons whom I represent.

As regards the treatment of prisoners of war, we have only to examine whether the commanders-in-chief, in execution of a common plan, ordered or criminally tolerated any kind of maltreatment of prisoners of war in the areas of operations.

If, during the first period of the Russian campaign, the Russian prisoners of war could not be accommodated and fed in accordance with the provisions of the Geneva Convention, this is entirely due to the fact that certain difficulties were at first unavoidable when hundreds of thousands of men were taken prisoner. Although after the end of the war the Allies were faced with similar difficulties when all of a sudden great masses of Germans were taken prisoner, the Allies will certainly not be prepared to accept a charge of crimes against humanity.

Moreover the individual cases put forward by the Prosecution have been invalidated or refuted by counterevidence from all theaters of war. The military leaders in all theaters of war forestalled possible excesses against prisoners of war by issuing appropriate orders and calling to account the persons responsible for offenses connected with the treatment of prisoners of war. They neither ordered nor knowingly tolerated any maltreatment or killing of prisoners of war.

Partisan warfare, as a new kind of illegal warfare, was started by the remnants of enemy armies, or by rebels who were supported by their governments. They did not fight according to the customs of war, openly and bearing arms, but acted clandestinely with all kinds of camouflage. This is clearly shown by the Russian instructions for partisan warfare. In consequence the partisans could not invoke on their own behalf the protective provisions of Articles I and II of the Hague Convention on Land Warfare. Energetic German countermeasures in the form of reprisals were thus "necessitated by the requirements of war." Thus the Germans issued special regulations for partisan warfare in 1942, and a revised edition in 1944. The other orders issued in this connection, which refer to "most energetic intervention," or speak of "annihilation of the enemy," that is to say, annihilation of his combat force, were likewise the consequence of the treacherous methods of the partisans. They were only intended to specify energetic intervention permissible from a military standpoint, not to authorize atrocities and arbitrary action. That excesses were committed in individual cases by the German troops was an inevitable reaction to the bestial murders of German soldiers.

But if the Prosecution go even further than that, and allege that the military leaders took advantage of partisan warfare in order to exterminate the civilian population of the occupied territories, this assertion is completely unfounded.

Affidavit Number 15, made by General Röttiger, to which the Prosecution have resorted, and which they have drawn up themselves, has been perfectly cleared up in cross-examination. The witness never received any orders concerning

partisan war which would have been incompatible with international law, and he confirms that military rules were observed even in this kind of operations.

The struggle against the partisans had, of necessity, to be bitter, owing to their illegal methods of fighting. But it was to be conducted only with permitted means. We are, therefore, concerned with necessary German measures of defense, which were not in any way directed against the civilian population of the occupied territories as such, and did not in any way have the extermination of this population as an objective.

The most serious accusation lies, no doubt, in the assertion of the Prosecution that the commanders-in-chief had full knowledge of the tasks and the activities of the Einsatzgruppen, which were allegedly under their command, and that they not only tolerated, but even actively supported the execution of the tasks of these groups. In this, the Prosecution relies on statements given by the higher SS leaders Ohlendorf, Schellenberg, and Rode, as well as on Document L-180.

Is this not highly doubtful evidence? Can this evidence really convey to the Tribunal the conviction that the generals of the German Armed Forces offered their assistance in these most abominable mass exterminations? My answer is in the negative, and I give it with the fullest conviction. The evidence given by the witness Ohlendorf, under whose command thousands of Jews were murdered, has been refuted by General Wöhler's evidence in all its essential points. Schellenberg, who occupied one of the most influential positions in the most notorious agency of Germany—the Reich Security Main Office—and was one of Himmler's friends, cannot supply any real facts but gives us only assumptions. He thinks he can assume that General Wagner was fully informed by Heydrich in June 1941 of the planned mass exterminations. When did this witness arrive at this incriminating assumption? Towards the end of 1945 when he was taken into custody, and when he was looking to his own advantages. Under my cross-examination, he was unable to indicate any facts from the year 1941 on which such an assumption might be based, but he nevertheless made it—for the first time in 1945.

Could General Wagner, a highly-qualified officer, who gave his life in connection with 20 July 1944, fighting against National Socialism, have omitted to report this atrocious information to his direct superior, Field Marshal Von Brauchitsch, with whom he had particularly close relations for a great number of years, and to whom he had access at any time in his capacity of Quartermaster General? This assumption is impossible—and Field Marshal Von Brauchitsch confirmed this in the witness stand.

Schellenberg, furthermore, believes that he can assume that the Ic officers were informed about the functions of the Einsatzgruppen in connection with mass exterminations at a meeting held in June 1941. He is not satisfied with this assumption only, but he

further assumes that these Ic officers informed the commanders-in-chief. This means that two of Schellenberg's assumptions, linked together, are to furnish the proof that the commanders-in-chief had knowledge of these planned mass exterminations.

And how did Schellenberg react in cross-examination to the assumptions made by him? I submitted to him a sworn statement by a man who was present at the Ic meeting, in which General Kleikamp expressly declares that there had been no mention of planned mass extermination, which must cause Schellenberg's structure of lies to crumble. His reply was that it was not for him to decide upon the value of the two oaths. He thereby places his assumption to the contrary, which is not founded on facts, on the same level as the positive statement made by one of those present at the meeting, according to which no information was given on the planned mass exterminations.

So much as regards Schellenberg's evidence. I ask the Tribunal to take full cognizance of the minutes of the cross-examination of this witness before the Commission.

The witness Rode, who is likewise a high-ranking SS leader, also wished to make a charge. He asserted that the Einsatzgruppen were placed fully under the authority of the commanders-in-chief, but he qualifies this statement by adding "to the best of my knowledge." This strips the evidence of the witness of all its value for the Prosecution.

I now turn to Document L-180, according to which the Commander-in-Chief of Armored Group 4, General Hoeppner, allegedly entertained particularly close co-operation with the Einsatzgruppen.

Is not the use of such a report highly dangerous to the finding of the truth, particularly since it only contains the views of its author? Then, too, it does not contain any indication as to the nature of this co-operation, or in what it consisted. The Einsatzgruppen and Kommandos, however, also had to carry out supervisory and investigating functions, as has been proved, and only these were known to the commanders-in-chief. If there was any co-operation at all, it could never have been in connection with mass executions of Jews.

General Hoeppner, who also lost his life as a victim of 20 July 1944, would have been the very last man to lend his assistance to mass murder. Is it really conceivable that a general who wants to remove a political system even at the cost of his life because of his special objection to its methods, should previously have taken part in the mass murders committed by this very system?

To my profound regret, I am unable to call Generals Wagner and Hoeppner as witnesses; both of them had not conspired with this system, but against it, and both sacrificed their lives thereby.

It is rather peculiar to note that the Prosecution who easily turn ironical whenever the defendants invoke the dead, are now themselves endeavoring to prove by citing the dead that the military leaders had knowledge of planned mass exterminations and participated in them; and the dead, unfortunately, are unable to protest.

In contrast to these inconclusive proofs advanced by the Prosecution I have shown by numerous affidavits that

(1) the Einsatzgruppen were not placed under the authority of the military leaders, which is also shown with particular clarity by Prosecution Document Number 447-PS;

(2) General Wagner clearly expressed this to General Judge Mantel; and that

(3) the military leaders had not been informed of planned mass executions.

The Tribunal will now have to decide whether it proposes to give greater credence to the SS leaders Schellenberg, Ohlendorf, and Rode, who are trying for the last time in their hatred to draw the military leaders into their own disaster, than to the officers of whom the Tribunal was able to obtain a personal impression.

Now as regards the other points of the Indictment, such as "maltreatment of the civilian population" and "destructions and lootings," I propose to refer to my submission of evidence on these points, which showed clearly that the military leaders intervened most severely in all cases of offenses brought to their knowledge.

As regards the participation of military leaders in the deportations of workers, the Prosecution has been unable to submit really conclusive evidence. The question concerning the shooting of hostages must be left out of account in this Trial, because the territorial military commanders in the occupied territories, insofar as they ordered any shootings of hostages at all, are not included in the group of persons represented by me.

Owing to lack of time, I propose herewith to terminate my observations on the war crimes and crimes against humanity. One thing, however, stands out very clearly: The military leaders did not act in execution of any plans having the object of committing war crimes and crimes against humanity. On the contrary, guided by a decent soldierly spirit, they conducted the war in a chivalrous way, and knew how to prevent the practical execution of all orders of Hitler which were not in keeping with their own conceptions.

It may, perhaps, strike the Tribunal that in all these observations I have only concerned myself with the field commanders of the Army and with land warfare, not with the generals of the Air Force and the admirals of the Navy, who are also said to belong to the so-called group. I can only defend, however, what is being attacked.

None of the submissions of the Prosecution concerning the commission of war crimes and crimes against humanity concern the commanders-in-chief of the Navy or of the Air Force at all. The only charge against the Navy, namely, that connected with the directives for submarine warfare, is specifically directed against the two Grossadmirale, who have assumed full responsibility for their orders, while the naval commanders-in-chief in the field had nothing to do with these orders at all. No charges have been proffered against the commanders-in-chief of the Air Force. If 17 admirals and 15 generals of the Air Force are included in the so-called "group," this constitutes the most striking proof against the theory of the existence of this "group" and renders any special defense of the admirals and of the Air Force generals superfluous.

The last count of the Indictment, that the military leaders had rendered themselves guilty because they tolerated in practice Hitler's criminal plans and deeds, instead of revolting against them. returns us again to the central problem of these proceedings against the soldiers: the problem of the duty to obey. It has been repeatedly stated that the Führer order was not only a military order, but that it had, over and above this, a legislative effect.

Thus were not the military leaders simply bound to obey the law? If the duty to obey does not exist in the case of an order which aims at a civil crime, it is because the order demands an action directed against the authority of the State. But can there be any question of a crime if the order requires action which is not directed against the authority of the State, but on the contrary is demanded by that authority? And even if we reply to this question in the affirmative, what citizen of any country in the world is in a position to recognize the criminal nature of his action?

It is not sufficient, in order to ascertain guilt, that the Prosecution explain what the defendants should not have done—at the same time, they should tell us what they might, ought, and should have done, for any legal prohibition must also include a positive directive. If I suppose that, in spite of the sovereignty of the individual states, a legal obligation existed for the generals to act in accordance with international law and moral requirements even against the law of their own State, such a legal obligation could only be affirmed if the corresponding action offered a chance of success. After all, to allow oneself to be hanged merely to evade one's duties, to betray one's country without any prospect of being able to change matters—these things cannot be demanded by virtue of any morality. After all, there is no obligation for anybody to become a martyr.

And what were the possibilities of negative or positive action against orders and law on the part of the indicted generals? What

were the chances of success? The simple rejection of unlawful plans or orders, be it by contradiction, warning, representations, objections, or the like, would have been in theory possible, but utterly unsuccessful in practice. To a certain extent this remained ineffective for the simple reason that the generals received no knowledge of many of the objectionable things. In the political and ideological struggle, these methods were so carefully kept secret from the generals, that they did not even hear about mass executions, to say nothing of being able to prevent them.

In the military sphere Hitler's closest assistants may perhaps have been heard on the question as to how a resolution was to be carried out militarily, but their opinions were never asked for as to the resolution itself.

In the majority of cases the military leaders indicted before this Court only learned of these decisions at the moment when they were called upon to carry them out as soldiers. As far as possible they made objections. Before the Rhineland was occupied the Commander-in-Chief of the Army, Baron von Fritsch, advised against a policy which might produce a war on two fronts, as well as against rearmament, and was dismissed. The Chief of the General Staff, Beck, raised political warnings, and was relieved of his functions. General Adam also opposed the intended policies, and was discharged. The OKH opposed the offensive in the West and the infringements of neutrality, and was eliminated. The Commander-in-Chief of the Army remonstrated in connection with outrages in Poland; the result was that the military agencies were excluded from the administration of the occupied territories. Warnings, objections, factual representations were never successful, and in the majority of cases only produced the effect that Hitler maintained his own opinions more stubbornly than ever, and insisted on his order being carried out. If even the steps taken by the highest commanders thus remained without success, what could the other indicted commanders of lower rank have achieved in this respect?

A democratic politician might say that they could have resigned. That is a practical possibility for a parliamentary minister in a democratic country—a German officer could not resign. He was bound by his military oath, which was a supreme obligation for the veteran officer, more than for anyone else. A German general could only ask for approval of his resignation. Whether that request was successful or not was beyond his influence. Moreover, during the war, Hitler prohibited any such request, and placed resignation on the same footing as desertion. A collective request for resignation, not feasible anyway in practice, would have amounted to mutiny, and would merely have served to bring compliant elements into the leadership, but would never have had enough influence on Hitler

as to cause him to change his policy, his orders, or his methods. The attempts at resignation which were actually made by some Field Marshals, and in particular by the Commander-in-Chief of the Army in November 1939, were flatly rejected. The subsequent dismissal was the result of Hitler's decision. The resignation of the field commanders would nevertheless have been their obvious duty and would have to be effected at all costs if these leaders had been faced with tasks in which, according to their conception, the honor of the German nation had been at stake. But precisely these tasks, among which I count the mass exterminations and the atrocities in the concentration camps, were outside the sphere of the generals and were even carefully kept secret from them.

Now, would open disobedience have been more readily possible, and would it have offered greater chances of success? The American Chief Prosecutor, in his report to the President of the United States, expresses himself as follows on this point:

> "If a soldier drafted into the Army is detailed to an execution squad, he cannot be held responsible for the legality of the sentence he carries out. But the case may be different with a man who by virtue of his rank or the elasticity of the orders given him could act as he saw fit."

This view was not shared by the generals. On the contrary, a simple soldier's disobedience is easily offset in its effect by punishment, but the disobedience of a high military leader is liable to shatter the structure of the Army, and even of the State itself.

If there is anything in the world that is indivisible, it is military obedience. No one has defined the meaning and the character of a soldier's duty of obedience more correctly than the British Field Marshal, Lord Montgomery. In a speech which he made at Portsmouth on 2 July 1946, he declared that as the servant of the nation the Army is above politics, and so it must remain. Its devotion is given to the State, and it does not behoove the soldier to change his devotion on account of his political views. It must be made clear that the Army is not an assembly of individuals, but a fighting arm molded by discipline and controlled by the leader. The essence of democracy is freedom, the essence of the Army is discipline. It does not matter how intelligent the soldier is—the Army would let the Nation down if it were not accustomed to obey orders instantaneously. The difficult problem of achieving strict obedience to orders can only be mastered in a democratic age by the inculcation of three principles:

1. the Nation is something that is worthwhile;
2. the Army is the necessary arm of the Nation;
3. it is the duty of the soldier unquestioningly to obey all orders which the Army, that is, the Nation, gives him.

And the German generals—according to the opinion expressed by the Prosecution—should not only have asked questions when they obeyed the Supreme Commander and the Nation, but they should even have rebelled openly!

Whoever wishes to render a just decision on this question ought himself once to have been an army commander during a war, in the front lines and in particularly serious circumstances, because there is a great difference between the commander on a heavily contested front line, who bears the responsibility for the life and death of hundreds of thousands of soldiers, and an officer who has no responsibility at the front line, or who is engaged only in a quiet sector. If the military leaders nevertheless unceasingly defended their soldierly conceptions and acted in accordance with them to the limit of their possibilities, this attitude ultimately produced no other effect than their complete elimination towards the end of the war. This is proved by a short survey of the fate of the military leaders:

Out of 17 Field Marshals who were serving in the Army, 10 were relieved of their functions in the course of the war. Three lost their lives in connection with the events of 20 July 1944. Two were killed in action, one was taken prisoner, and only a single general remained in service until the end of the war without being subjected to any disciplinary action. Of 36 generals (Generalobersten), 26 were removed from their posts, from among whom three were executed in connection with the events of 20 July 1944, and two were dishonorably discharged. Seven were killed in action, and only three remained in service until the end of the war without being subjected to disciplinary action. Those who were subjected to disciplinary action were highly qualified officers who had given a good account of themselves in combat.

Let me recapitulate:

(1) Military disobedience is and remains a violation of duty, in times of war a crime punishable with the death penalty.

(2) There exists no duty to disobey for any soldier in the world, as long as states with a sovereignty of their own continue to exist.

(3) Under Hitler's dictatorship, open disobedience would only have led to the destruction of the subordinate, but never to a repeal of orders given.

(4) No class has made, through its highest representatives, such great sacrifices for its conceptions as opposed to Hitler's methods, as the circle of officers who are indicted before this Tribunal.

In view of the impossibility and the ineffectiveness of any passive resistance, there would have remained only the method of violence, rebellion, and *coup d'état*. Whoever contemplated this method had to be aware of the fact that it would have to involve the removal

of Hitler and of the leading men of the Party in such a way that these men would be put to death. There was, therefore, at the beginning of each *coup d'état* the inexorable compulsion to liquidate Hitler and the leading men of the Party.

To the soldier this meant murder and disloyalty to his oath. Even if it is demanded that the generals, for reasons of a higher world morality, ought to have sacrificed their personal and military honor, how could they have been justified in taking such action against the will of the Nation, and when could such action have been effected with good chances of success and for the benefit of the people? After the incorporation of the Protectorate, Hitler was at the crest of his successes and was considered by a great many Germans as the greatest of all Germans. If Churchill said of him, on 4 October 1938, that

> "... Our leadership must have at least a fraction of the spirit of that German corporal who, when everything around him had fallen in ruins, when Germany seemed to have sunk into chaos for all times, did not hesitate to march against the formidable phalanx of victorious nations..."

is that not proof enough that the wrath of the German nation would have annihilated the generals who would have laid hands on Hitler? Were the generals to remove Hitler at a time when a peaceful settlement with Poland was still a practical possibility, when it was impossible for the German people to foresee that the war would actually come, and what consequences it would have—as they are today openly visible to all our eyes?

Then war did come, and it brought another and very decisive obligation for the military leaders. Any rebellion in war would have amounted to a catastrophe for the Reich. Even then, as long as there were victories, no rebellion would have had any chance of success. But when it became clear after Stalingrad that the fight now had to be continued for the very existence of the German people, the military leaders had even less of a moral right to bring about a collapse of the front lines and the whole country by a *coup d'état*. In those days, large sections of the German people still believed in Hitler. Would the military leaders not have been made responsible for everything that the German nation is feeling so heavily today as a consequence of the capitulation? Can one really consider a *coup d'état*, disloyalty to the given oath, and murder, as a legal obligation of the soldier in the midst of a war for the very life and death of the Nation? As Field Marshal Von Rundstedt said in the witness stand:

> "Nothing would have been changed for the German people, but my name would have gone down in history as that of the greatest traitor."

To what extent any such attempt was condemned to failure is proved by the unsuccessful attempt on Hitler's life on 20 July 1944. Even the preparation of this attempt over a number of years and the participation of men from all walks of life were not able to assure its success. How, therefore, could the 129 indicted officers have successfully carried out a *coup d'état?*

Certainly, if they had been the united association which the Prosecution would so very much like to regard them, they might perhaps also have contemplated a commonly-planned violent revolt; but since they were not a closed organization, since they were not politicians but "only" soldiers, they could do nothing on their part to bring about a change of conditions. They could only obey to the last, in spite of the fact that they knew how desperate the military situation was. The German military leaders found themselves hemmed in between their rights as men and their duties as soldiers.

As citizens of the State they might have claimed for themselves the right to refuse service to a Führer and a system which, the longer the war lasted, proved to be more and more harmful. They might thus have evaded their personal responsibility, they might have—as the prosecutor puts it—"saved their skins." Perhaps they would not now be before this Tribunal. But by taking such a decision they would at the same time have let down their soldiers who trusted them and for whom they felt responsible. Therefore there remained for them as soldiers only the duty to fight. This "duty" might, in a wider sense of the word, have consisted in overthrowing the system. In war, however, this would practically have amounted to nothing less than inviting defeat. No soldier could take that upon himself. No military leader can for years demand of his soldiers that they should give their lives, and then abandon his post himself and go down in history as a traitor to his nation.

Thus there remained for the German military leaders only the duty to fight the enemy to the last. Confronted with the tragic decision between personal rights and soldierly duties, they decided in favor of their duties, and thus acted in the spirit of soldierly morale.

What other possibility would have remained open to them to keep themselves and their soldiers free of criminal acts? There was only a single possibility: circumvent criminal orders; evade them, or transform them by additional orders in such a way that the result was in keeping with the soldier's sense of justice and decency. This they did as far as possible in order to conduct the military war, which alone was their business, according to the rules of international law and of humanity. If besides this the political and ideological war was carried on by methods which have today

exposed the German people to the contempt of the world, the German generals as a group had no part in this kind of war. I have now reached the end of my observations. I believe I have proved:

(1) That the 129 military leaders whom the Prosecution want to indict were in no respect an "organization" or "group," and represented even less a united will for the execution of criminal acts. These men are not a gang of criminals.

(2) That the invented collective term "General Staff and High Command," with which the Prosecution designates these officers, represents in reality a purely arbitrary combination of holders of the most varied service posts from quite different periods and from fundamentally different branches of the Armed Forces. Chosen without any real justification and without legal necessity, it can only have the purpose of throwing deliberate slander on the institution of the General Staff, which has been taken as a model by so many nations. What a slogan, indeed, for the international press: "The German General Staff a criminal organization!"

I furthermore believe I have proved:

That the military leaders in Hitler's state did not even have an opportunity to participate in a political plan or a political conspiracy with the object of waging a war of aggression, and even less to assist in it actively. They constantly uttered warnings, and were finally themselves overcome by the political leadership.

I believe finally to have proved:

That after the outbreak of war the military leaders engaged in passive resistance against Hitler's methods which disregarded the rules of warfare and of humanity. They thereby in practice prevented the commission of crimes against the rules of war and of humanity as far as it was possible, and maintained as soldiers the spirit of Christianity.

If individual officers among the indicted generals have committed crimes, they will know how to account for themselves. The group as a whole is not guilty of the crimes which were committed. On the contrary, this circle of officers was one of the strongholds of decent, humane, and Christian conception and action. Only an observer who witnessed at close range the enormously difficult situation in which every one of these men found himself, can do justice to their attitude. All alone they had to settle the conflict of their conscience, and could not seek assistance in the distress and torment of their conscience by resorting to the members of a Parliament, to the editors of a free press, or to prominent influential men of public life, as was possible for the military leaders of the other side. It was precisely these men who were persecuted with derision and hatred. They were openly, and still more in secret, branded as "reactionary generals," as "dust-covered knights of a

medieval code of honor." They, not the "great Hitler," were made responsible by Party propaganda for every military setback, they were the traitors and saboteurs to whose sinister influence all misfortunes were due. Without them, Hitler would have won his war.

The abysmal hatred of the mass murderers from the circle around Himmler is persecuting them even to this very courtroom, and endeavoring by lies and distortions to drag them down into disaster. The prosecutor does not realize how much he contributes, by his theory that Hitler was driven on by instigators and advisers and that everything was ultimately the generals' fault, to revive the halo around Hitler, so that Hitler may one day appear, not as the political criminal and the mass murderer of millions of people, but as the tragic hero who was pushed into the abyss by the gray figures who surrounded him. Does the prosecutor really wish to challenge the judgment of history in such a way?

History has its own method of judgment. The summary kind of judgment demanded in this case is practically unique in the history of the world. There is in fact only one parallel, and it is both a warning and a lesson. On 16 February 1568, a verdict rendered by the Holy Office sentenced all inhabitants of the Netherlands to die as heretics, with the exception of a few specially-named cases. The Duke of Alba, who was devoted to his royal master in blind and fanatical obedience, was appointed executioner for this mass verdict. The judgment of history on this first great manifestation of the idea of collective guilt is well known.

History will deliver its own judgment on the military leaders with whom we are concerned here, and the German generals believe that they will be able to hold their own in its verdict. Today, however, we are concerned with the verdict to be rendered by this International Military Tribunal. Let the Tribunal not neglect the fact that the knowledge which it possesses today of the entire trend of past events—both as regards their external course and their background—was something these men did not have when they made the decisions for which they are to be held responsible today.

These men do not fear for their lives—their anxiety is concerned only with justice. May it please the Tribunal of Nuremberg to render a verdict which, as I said in my opening remarks, is uninfluenced by the passions of everyday life, far removed from blind hatred and vengeance and the petty instincts of retaliation and which, standing out pure and unfalsified in the face of eternity and of a better future of the nations, is nothing but just!

THE PRESIDENT: The Tribunal will adjourn.

[The Tribunal adjourned until 28 August 1946 at 1000 hours.]

TWO HUNDRED AND THIRTEENTH DAY

Wednesday, 28 August 1946

Morning Session

SIR DAVID MAXWELL-FYFE: My Lord, might I mention the letter from General Warlimont which we discussed yesterday in connection with Dr. Laternser's application to call Colonel Bürker. My Lord, the Prosecution had the opportunity of considering the letter and they are quite prepared to admit that the part of the letter which relates to Colonel Bürker, that is, Division "A" of the letter, contains what Colonel Bürker would say if he were called. We are quite prepared to make the admission or stipulation which your Lordship suggested yesterday. The other parts of the letter, "B" and "C," relate to a statement of General Warlimont himself, and a statement of a Major Meier. Dr. Laternser has not made any application with regard to these parts and he is quite prepared that they should not be read. Dr. Laternser is prepared to agree with our suggestion that the first part relating to Colonel Bürker be treated as the evidence that Colonel Bürker would have given if he were called.

THE PRESIDENT: Then perhaps you will read Paragraph "A" of the letter?

DR. LATERNSER: I shall read from a letter from General Warlimont:

"Nuremberg, 23 August 1946. To Attorney Dr. H. Laternser."

I shall leave out part of it and I begin at:

"(A) About 10 or 14 days ago, early in the morning, there came to see me in the generals' camp at Dachau a colonel of the General Staff of the former German Army, Bürker, who is also detained there, and whom I have known for many years. He told me that he had learned from the radio news the evening before of the Russian accusation against the OKW for alleged preparation of bacterial warfare. In this connection he recollected an incident during his short activity as Chief of the Organization Department of the Armed Forces Operations Staff, which he related to me more or less as follows: . . ."

And now comes a direct quotation:

"In the autumn of 1943, probably in late September, there came to see me in my office three gentlemen who were unknown to me. One of them belonged to the Army Medical Inspection, and the second presumably was from the research office of the Army Ordnance Branch; as to the third I can no longer recall his name nor to which office he was attached. They explained to me that in their opinion research work for countering any bacterial warfare from the enemy side was no longer adequate. Their mission, which was exclusively limited to research for defense purposes, would have to be extended. They were convinced that it was essential to exhaust every possibility, even to the extent of a counter-attack which might be contemplated. The gentlemen urged me to discuss this with the Chief of the OKW (Keitel). I had only just taken over the position of Chief of the Organization Department at the beginning of September 1943, after 2 months' preparatory training with my predecessor, Colonel Münch (who was killed in action), and up to then had not heard anything at all about this matter. When making my next report to the Chief of the OKW I brought up the matter. He was extremely angry, and said to me in an unusually sharp tone, 'That was forbidden a long time ago and there can be no question of such a thing,' or words to that effect."

THE PRESIDENT: Dr. Kubuschok.

DR. EGON KUBUSCHOK (Counsel for the Reich Cabinet): Mr. President, Gentlemen of the Tribunal: The proceedings which the Prosecution proposes to conduct against the organizations are in many respects an innovation. For the first time organizations with millions of members stand before the judge of a criminal court, for the first time a judgment is awaited with respect to the civilian and military leaders of a state. This brings to light the importance as well as the complexity of proceedings of that kind. It therefore follows that it is the duty of counsel for each organization to deal generally with all the factual and legal problems of these proceedings.

The Prosecution base their indictment on the hypothesis that according to general principles of law there exists a collective criminal responsibility, and that in consequence a criminal condemnation of a group as such is also possible. They attempt to justify this criterion of law by examples from the penal laws of various civilized countries; it becomes clear, however, that none of the examples mentioned amount to a criminal condemnation of the organizations as such, but only to the condemnation of the individual because of his membership in an organization declared

criminal. Nor could it be otherwise. Criminal responsibility can only apply to an individual. All criminal law is based upon the concept of guilt, the recognition of a criminal act as such, and the firm determination to carry out this act. Only the individual has the faculty to recognize and to form a will, and therefore to have a concept of guilt.

It is a different matter whether, as a result of the developments of our age, responsibility of the organization is established for the domain in which, because of its very nature, it is bound to harm the interests of the state. We are here concerned with infringements of administrative order, not with the domain of criminality rooted in ethics. Laws were created to prevent these infringements, to punish the organizations as such because of their responsibility in producing pernicious effects and to do so by means which can be applied to the organizations as such. A punishment under administrative law, or a fine because of prejudicing state interests by an organization, is practicable, and for the sake of expediency, the laws of various countries have regulated it. This procedure is based on a merely objective establishment of the facts as distinct from an examination of the question of guilt, which is not possible.

Using this as a starting point, we must examine what the significance is of the conviction which the Prosecution has demanded. First of all this requires an establishment of the facts of historical portent. Furthermore, the establishment of the criminal character of the organization represents a retroactive outlawing of the organization, which in the meantime has been legally and actually dissolved; and, what is more, it includes all members of the organization. Such a declaration of criminality involves them all, and by its effect, to use Mr. Justice Jackson's words, the "bad" elements are segregated from the "good" elements.

Finally, and this is the decisive and at the same time the most problematical implication of such a declaration: by virtue of Control Council Law Number 10 it creates to a large extent the establishment of guilt for the individual member. The Control Council Law Number 10 is as yet a skeleton law, so to speak. Article II d provides that membership in an organization declared criminal by the Tribunal is liable to punishment. Once the Tribunal has given such a judgment, the former gap in the criminal provision is filled. The name of the convicted organization then, so to speak, becomes part of the wording of the penal provision. The criminal nature of the organization is now no longer a characteristic of the facts. Therefore, there is no need for the individual perpetrator to know of this characteristic of the organization. The criminal action now to be adjudicated by the court of the Control Council Law arises from the mere fact of membership. Therefore, only the objective

and subjective elements of membership as such are subject to adjudication by the Court. The individual member who in this Trial is called to account is faced with an incidental decision already reached, which deprives him of all other subjective and objective pleas which do not concern his membership as such. When the question of his guilt comes up, he can no longer plead that he did not know of the criminal aims of the organization, that he did not foster them, no longer advance motives for his entering into the organization or remaining a member of it.

The incidental determination goes even further and affects the very substance of Article II, Figure 2 e, of the Control Council Law, according to which each member of an organization declared criminal also shares the responsibility for all the crimes which the condemned organization is charged with having committed.

In actual fact, the conviction of the organization constitutes a conviction of the individual member who belonged to the organization. The fiction of criminal responsibility of the organization thus brings about what no system of criminal procedure which has ever existed has so far recognized: the guilt of the members is abstractly disassociated from them, and transferred *in toto* to the organization, with the result that, the guilt of the organization having been established, it is no longer necessary to furnish complete proof of the guilt of the individual member.

If one considers these consequences and the inescapable effect which the declaration has of proscribing all members, the definition of "criminal character" to be applied by the Court to the organization because of the absence of legal provisions can have but one result: the individual member will of necessity be included in the Court's argumentation; the concept of the organization can be understood merely as the sum total of individual members. This means that the procedure for the determination of guilt now advocated must be dealt with as a procedure against the individual members, not against what is abstractly termed an organization. This recognition gives rise to the difficulty of the present proceedings which, according to the statement made by the Prosecution, are expected to facilitate the procedure of the subsequent trials; but according to the generally adopted viewpoint of the individual guilt of the perpetrator, this actually means the shifting of the determination to another court. It is true that this Court has an advantage arising from the fact that, because of its connection with the proceedings against the 21 major defendants, it can with greater ease and with more uniformity form an idea of the actual basic questions. To shift basic decisions to a court which of necessity must take a global view of all the historical events is in itself a laudable thought, but one should not ignore the

limits of what is possible in practice. If the Court had merely been given the task of determining historical events and of judging whether a group of members of the organizations indicted participated in them, this task could be solved with comparative ease. In this case, however, the Court is given the task of making a declaration on the total aims and the total results of the activities of an organization, a declaration which in the light of the foregoing must take into consideration the knowledge, will, and action of each individual member of the organization. This gives rise to the difficulty of finding a basis for a judgment which is in accordance with the wording of the Indictment.

Another general legal viewpoint cannot be omitted in order to arrive at the definition of the concept of "criminal organization." By the pronouncement of proscription, already inherent in the verdict, and by the incidental determination, which is to be valid for the subsequent proceedings, the proceedings affect each member of the organization. Because of his membership he is to be outlawed and punished. The law which retroactively declares punishable the membership in the organizations under discussion is undoubtedly a new law. The legal aspect of the retroactive law has already been dealt with in the proceedings against the 21 individual defendants. The Prosecution at that time declared that in applying a retroactive law there was justification for including actions which the perpetrator at the time of their commission knew to constitute an infraction of the general moral and ethical laws, or universal laws. However, the case is different when it comes to the indictment of the organizations. The judgment is not now concerned with the fact that an individual perpetrator committed a criminal act regardless of his awareness of its general condemnation, although at the time of commission a law against it did not exist. The point now to be decided is whether a person incriminates himself by being a member of an organization. Assuming that the organization in question actually had and carried out aims which were contrary to the general law of ethics or to universal laws, this does not of itself establish that the member of the organization was aware of his guilt by becoming a member or continuing to be a member. An organization can be criminal, or its activities can be criminal, but it does not necessarily follow that the individual member who joins it or remains in it, even though he may have knowledge thereof, must under all circumstances take upon himself the guilt of those who set the criminal aims and were active in carrying them out. This becomes particularly evident in the case of an organization whose purpose was originally legal and which subsequently set

for itself and pursued a goal partly or entirely illegal. A member who still remains in it may do so from various motives, not necessarily immoral ones. It is quite conceivable that such a member resolves to remain in the organization because he believes that in so doing he may be able to influence the execution of the illegal aims, that is, either to prevent them totally or partly, or at least to attenuate them. In regard to the criminal deed with which he is charged, arising from the mere fact of membership in the organization, such a member is not aware of a criminal or even a moral wrong. He can judge his membership in the organization merely in the light of the law which was in force at the time when his action was committed. This can only be the law of his own country. A member can be incriminated only on the basis of what the laws and jurisdiction of his country have established in terms of criminal responsibility arising from membership in organizations. I therefore must confine my discussion to that which so far was known abstractly to a German national about the law and jurisdiction in connection with that question. There are very few German penal laws which deal with criminal membership in an organization. In his speech of 28 February 1946 Mr. Justice Jackson discussed these laws. All these laws govern only individual proceedings against a member.

The established opinion of German jurisprudence and adjudication on Articles 128 and 129 of the Penal Code, and other similar provisions of law dealing with the question of membership, is that formal membership is not sufficient to establish the facts involved in a case of criminal law, but rather continued activity to achieve the illegitimate aims of the organization. The member must prove his membership in the organization by his deed, and he must consciously further the illegitimate aims by his actions. It is not deemed sufficient that the member, having knowledge of the illegitimate aims of the organization, should outwardly proclaim his membership, thereby expressing his approval of the aims endorsed by his membership, but he must participate in the achievement of the aims by his own activity in the organization. Therefore, according to German law, it is immaterial whether the outward appearance of his membership can be construed to mean that he approves of the aims of the organization and thus possibly enhances in any way the reputation of the organization before the world. This eliminates all cases where proof of the knowledge of criminal aims or of active participation by the member in the achievement of these aims is not forthcoming; also it particularly eliminates those cases where the member disapproved of the aims and did everything in his power to prevent the achievement of the aims, or at least to mitigate them.

A member of an association could therefore, if he had moral unobjectionable reasons for joining or remaining in an association, rely on this abstract German legal principle. Therefore a retroactive law which makes the simple fact of membership punishable cannot possibly furnish the justification sought by the Prosecution in the case of individual defendants. Here there is no infraction of a general legal disposition or general moral principles which originally must necessarily make him conscious of the illegality of his conduct. Such a violation is, provided the reasons for becoming or remaining a member are not morally objectionable, not established. In order to establish the concept of "criminal organization" underlying its judgment, the Court must take into consideration the knowledge and activity of the individual member. It must be established that through his membership in the organization the member approved of its criminal aims, and actually advanced them by his own activity. In defining the criminal concept it will have to be borne in mind that all crimes mentioned in Article 6 of the Charter concern unlawful warfare, and that especially the crimes against humanity, Article 6 (c), must be connected with the planning or execution of such a war.

In summarizing I should therefore like to establish the following: An organization can be declared criminal only if all the individual members conceived a common plan for an unlawful war, or if they joined in a war which gave rise to the crimes willed by the planners, as stated in the Charter. The individual members not only must have joined the organization with such knowledge, but they also must have consciously advanced these aims by their activity. I do not deny that the Tribunal faces a very difficult task in connection with this legal argumentation. In my deduction I started out from the Prosecution's concept that the proposed declaration would also comprise the question of guilt of the individual member, and that in subsequent proceedings such a member is reduced merely to the objections which refer to the fact of the membership itself. An absolutely necessary consequence of this concept is that the Tribunal will have to apply its decision to the sum total of cases of individual members, in order to prevent the decision issued from embracing also the verdict of guilty against all individual members without an individual examination of the question of guilt having been carried through for each individual, whereby the innocent in fact would be declared accomplices indiscriminately and without having been heard. The only means to avoid this would be for a modified verdict merely to establish objective historic events without thereby at the same time taking a decision as to the individual member and his subjective guilt. It is quite clear to me that such a modification would give rise to legal scruples with

regard to the Law of the Control Council. As it is, we can approve of such a solution only if the Court can eliminate these scruples and actually guarantee thereby that in later proceedings the case of each individual member be examined to the extent which I have mentioned. If the organization in the last analysis is conceived as representing the bulk of the individual members, this will lead to the conclusion that the shaping of its purpose presupposes a general expression of the will of all members. Without the totality of the members, a change in the purpose of an existing organization cannot be realized. All members must at least know the new aim and must be determined to sponsor it. Otherwise, if this new aim be a criminal one, the previous legal organization would be split in two, one with legal tendencies and another with criminal ones. It would then be impossible to declare the entire organization to be a criminal one.

Furthermore, the question is to be examined as to whether it is sufficient, in establishing the criminal character of an organization, that a further criminal purpose be added to a hitherto legal one. Here also my previous conclusion should be considered that the definition "criminal" must comprise the total aim of the organization as a body. Should the criminal purpose be only a part of the aim and sufficient to allow the whole of the organization to be declared a criminal one, the legal aim would be simultaneously discredited by this general definition. Would not then even those acts which were committed for the purpose of the fulfilment of the legal aims, be illegal ones as acts of an entirely criminal association? In respect to the case of the Reich Cabinet it seems impossible to me to declare this institution as such to be definitely criminal, whereas at the same time there can be no doubt that at least the legal acts were fully legal in their effect. The legislation of the Reich Cabinet since 30 January 1933, which comprises all state administrations, has still today its predominant legal force. It would be an absurdity to consider these legislative acts as valid, if the aim of the Cabinet was unrestrictedly criminal. Another presupposition for the declaration proposed by the Prosecution, which we must consider, is the freedom to join the organization, freedom which must not only be present at the joining of the organization, but also particularly at the changing of the original aim when remaining in the organization. It must therefore be actually examined whether the right to remain in the Cabinet voluntarily was always conceded, or whether the legal and actual conditions abolished that right, at least from a certain date onwards.

Finally the question must be examined as to whether there existed throughout a cohesive connection between the persons who

are indicted as members of the Reich Cabinet. Only such a connection would justify any acts charged to the Reich Cabinet being considered as having been committed by the Cabinet as a whole. This problem is already evident, because the Prosecution, who for their part also generally consider a cohesive co-operation of the members of the organization to be necessary, have legally established the unity of persons which they designate as "Reichsregierung" by the criterion of the right to participate in the meetings of the Cabinet. As these Cabinet sessions were discontinued in the course of time, it remains to be examined whether afterwards, in their stead, there was any other tie which bound the members in the same way in the performance of the activity under consideration by the Prosecution. Starting from these general considerations dealing with the organizational problem as such, and the special problem of the case of the Reich Cabinet, the result of the evidence must now be examined in order to establish whether the requirements for a sentence exist as argued.

First, I wish to turn to the numerical limitation of the circle of persons indicted. The Prosecution start from the right to participate in the Cabinet sessions. They thereby suppose that the criminal activity assumed by them took place within the framework of the personal connection afforded by the sessions. They overlook, however, the fact that a number of persons mentioned in Appendices A and B of the trial brief were merely entitled to participate in those deliberations of the Cabinet sessions which concerned their own administrative sphere. The Prosecution obviously desire to stress the resolution of all the participants, particularly in matters of general politics, so that those members who were entitled to attend the consultations only occasionally and in part must, as a matter of course, be excepted from the organization in question. I therefore refer to Appendices A and B, where the Prosecution have stated the extent of the right of participation for each of the persons mentioned.

With reference to Appendix B, I should like to state that the commanders-in-chief of the Wehrmacht branches, that is, Fritsch, Brauchitsch, Raeder, and Dönitz, were only entitled to participate in Cabinet meetings on the basis of the Führer directive of 25 November 1938, that is to say, not generally. With reference to the legal point in the case of Keitel I refer to Dr. Nelte's final speech. Schirach also had the right to participate only when his sphere of activities was involved. In the case of Axmann this is shown correctly in Appendix B, but in the case of Schirach it has been overlooked. In this respect, therefore, we have to supplement the list in Appendix B with reference to Fritsch, Brauchitsch, Raeder, Dönitz, Keitel, and Schirach. In addition to the above conclusion,

I believe that Reich Commissioner Gereke's right of participation was also restricted. Moreover, this case seems equally worthy of mention because Gereke resigned already in April 1933.

In this connection those who, while they had the right of participation in the Cabinet sessions, had no voting right and were only present for information, should also be mentioned. In this category were the Chief of the Press, Dietrich, and State Minister Meissner.

The question of the voluntary status of membership in the Reich Cabinet cannot be answered uniformly. In dealing with the question of voluntary entry into the Cabinet, those cases will particularly have to be considered, in which state secretaries who previously did not belong to the circle of persons included by the Prosecution were, through the resignations of the ministers over them, immediately entrusted with the conduct of ministerial affairs and thus entitled to participation in the Cabinet sessions. To a certain extent their entry into their new post must be considered as part of their civil service career.

The question of a member's remaining in the Cabinet must be judged differently according to the time. Legally, the following must be borne in mind in this respect: According to Article 11 of the Reich Minister Act of 27 March 1930, the Reich Ministers could ask for their release at any time. An alteration of the legal position could already have occurred by virtue of the Ministers' Allegiance Act of 17 October 1934, which is Document Number 22. According to this, the ministers had to swear allegiance and obedience to Hitler. A letter of resignation could be construed as a breach of allegiance and obedience and therefore be considered legally inadmissible. The question can however really be left at that. The legal consequences deriving from the ministers' oath are in any case expressly and legally established by the German Civil Service Act of 26 January 1937 (2340-PS), which was put into effect on 1 July 1937. By this law the Reich Minister Act of 27 March 1930 was cancelled. Article 161 stipulated that the Reich Ministers could now be discharged by Hitler alone.

Legally, therefore, it was no longer possible for a Cabinet member to resign after 1 July 1937. It will be objected that nevertheless cases occurred where Cabinet members obtained their release. The cases of Gereke, Hugenberg, Papen, Schmitt, and Eltz von Rübenach are prior to this time and must therefore be excluded.

In the subsequent period various Cabinet members endeavored to resign. They mostly failed, as we have heard on many occasions during the hearings of the individual defendants. Many only succeeded in being discharged from their department while being provided with a new title or a new office, so that they again came

within the category of persons implicated by the Prosecution. Darré was relieved of his official functions and even expelled, but could not obtain his official dismissal as minister. Schacht had for that reason been preparing to break with Hitler for a long time, which brought him into a concentration camp; State Minister Popitz was executed as a participant in the plot of 20 July 1944.

Thus we see that in spite of the legal position, it was actually not possible for a member of the Cabinet to resign against Hitler's will. Even the Prosecution admit that, apart from the voluntary status of membership, a cohesive co-operation of the members must be established in order to consider the Reich Cabinet as an organization or group within the meaning of the Charter. They hold that this cohesive association can be seen in the Cabinet meetings and the circulating procedure. I shall show by the following that there was no such collective co-operation among the members of the Cabinet, and that as time went on there was even a definitive split in the Cabinet. The evidence shows that three interlocking factors brought about a split in any internal cohesion of the Cabinet. These three factors are as follows:

(1) The development of Hitler's absolute domination, which increased until it became an absolute dictatorship;

(2) The establishment of superior and subordinate offices among the Cabinet ministers originally possessing equal rights within the Cabinet, through the authority to give orders conferred on the plenipotentiaries, special delegates, *et cetera;*

(3) A carefully guarded secrecy which precluded the individual minister from gaining any knowledge outside his department, and thus made any super-departmental co-ordination impossible.

In this connection it is necessary to consider historically the state of affairs as it developed, and to find the reasons. Until 1932 one might feel inclined to assume that the Reich Cabinets displayed a certain "cabinet solidarity." At that time Cabinet meetings were continuously taking place, during which all bills as well as differences of opinion on questions which affected the sphere of several ministers were submitted for consideration and decision. Resolutions were passed on the majority of votes. Even at that time and at that stage of practice and knowledge the idea of a collective responsibility of ministers was rejected. In the authoritative Manual of German Constitutional Law *(Handbuch des Deutschen Staatsrechts)* by Anschütz and Thoma, the well-known lecturer on constitutional law, Baron Marshal von Bieberstein, wrote in 1930, Page 529; I quote:

> "General principles throw a most doubtful light upon the affirmation of collective responsibility for majority decisions because, especially in jurisprudence, one can only talk of

responsibility in regard to rational beings. An established state practice in the sense of such an affirmation cannot be proved for the Reich; on the contrary, the competent ministers make themselves personally responsible.... Above all, German political practice does not know the principle of 'cabinet solidarity' as admitted abroad, especially in England, which involves a collective liability for all individual actions ..."

This denial of a collective liability holds good not only for the responsibility of the ministers to the Reichstag, but also in the proceedings before the State Tribunal, before which the ministers could be indicted and sentenced for their activity, much in the same way as the English "impeachment."

Moreover, at that time already a restriction was placed on the passing of resolutions by the Cabinet, and thus on the free decisions of the ministers, by the right of the Reich Chancellor to determine the policy for which he then bore the sole responsibility. There were no discussions and consultations about these directives of the Reich Chancellor; they were binding upon the ministers. Bieberstein wrote about this in his thesis, on Page 528:

"The situation is different as regards the encroachments which... his (the minister's) free decision suffers through the binding force of the Chancellor's directives. Since it was his duty to conform with these, his position was similar to that of a subordinate in the hierarchy of authorities in regard to the orders of a superior; thus he himself was not able to examine whether in his conduct he was complying with duty, and the result was that he could only show that he had acted in accordance with orders, and not whether he had acted rightly. Thus the responsibility is shifted to the person giving the orders."

This was equally true of the proceedings before the State Court, the German "impeachment."

Thus we have to admit that, already in a period of a purely democratic German form of government and state procedure, "cabinet solidarity" did not exist in spite of regular Cabinet meetings, and that the ministers certainly did not work in cohesive cooperation as soon as at the Cabinet meeting the Reich Chancellor asserted his right to determine policy.

For the period prior to the establishment of the Hitler Government, it will further have to be considered that the government authority had slowly devolved upon the person of the Reich President by the application of the Emergency Decree Law. Already at that time the normal legislative body, the Reichstag, was enacting laws only to a diminishing extent; the decisive laws were being issued

by the Reich President on the strength of the Emergency Decree Law. The ministers, therefore, were no more than advisers of the Reich President. It is a symptom of this development that the Papen Cabinet had already been established purposely by Hindenburg as a Presidential Cabinet, whereby the Cabinet was composed of people in whom Hindenburg had confidence, and whom he had appointed as departmental ministers. The position of the Reich Chancellor therefore gained considerably in importance, because neither the ministers nor the Reich Chancellor had been appointed as exponents of the parties, with the result that their position with relation to the parties was more independent than had been the case previously. The Reich Chancellor was the liaison man between the Cabinet and the Reich President. It was this position in particular which gave him a distinct superiority over the other ministers.

That was the situation when Hitler became Reich Chancellor. In its early stages his Cabinet also was a Presidential Cabinet, which depended on the confidence of the Reich President and his Emergency Decree Law. Up to the time of the passing of the Enabling Act of 24 March 1933, all laws were issued on the strength of the emergency powers and therefore were under the responsibility of the Reich President.

The Enabling Act was the decisive factor in the further development. The legislative powers were now transferred to the Reich Cabinet. These were not conferred on Hitler personally but on the Reich Cabinet. I do not claim that the Reichstag of that time already regarded Hitler as the Reich Cabinet. But it is certain that the Reichstag was influenced by the system of emergency decrees which had been the Government's policy for a long time. Therefore by its nature this new emergency legislation created by the Reichstag had no other purpose than to legalize this state of affairs for a future emergency. Thus a Reich Cabinet whose inner structure and working methods had been shaped during the time of the Presidential Cabinet came to hold power. It is true that the sole responsibility, such as was assumed by the Reich President when passing the emergency decrees, was not transferred to Hitler. Yet to a certain extent he filled the gap caused by the elimination of the Reich President. This became apparent to the outside when the Reich President's right to sign laws was transferred to him. To this was added his right as Chancellor to determine the basic guiding principles of policy. Both factors together doubtlessly resulted in a considerable strengthening of Hitler's position and power in the Cabinet over and against his ministers. The seeds for his later autocracy had been sown.

At first this was not clearly manifest in the working methods of the Cabinet. True, resolutions were no longer passed, but objections

by the ministers were taken into consideration, which in individual cases led to the withdrawal or modification of radical bills. Nevertheless the Reich Chancellor's right to determine the principles of political directives was already more manifest. Hitler laid claim to this right for himself and made it clear that the responsibility was his alone. But more important than this development within the Cabinet were the influences from outside. The Party now set to work and took upon itself everything the Government was careful to refrain from doing. The boycott of the Jews and the smashing of the trade unions were measures taken by the Party. The ideas of the Party began to take hold of the masses. They undertook what the Party liked to term a "revolution." The witness Gisevius has summarized this development in the following terms, which are taken from his book, Pages 141 to 143:

> "It is not individuals that espouse the cause of National Socialism; it is the masses which are roused. Because nobody wants to lag behind events, all strive together to outstrip the revolutionary development by a short lead. These easily swayed impulses, this irrational spiritual upheaval of the masses can alone explain the Nazi co-ordination which occurred in the early summer of 1933 with sudden intensity, although voluntarily and spontaneously.... As a mass they create a new will, open up a new road."

This movement also gripped the old political parties. They dissolved themselves voluntarily. They went even further; they assured Hitler that their former members would loyally collaborate with the National Socialist State; they called upon their former members to do so. The Bavarian People's Party

> "...cleared the way for every former member of their party to collaborate in the construction of the new Germany under Adolf Hitler's direct leadership."

The Catholic Party by its dissolution—I quote—

> "...enabled its supporters to put their forces and experience unreservedly at the disposal of the national front under the leadership of the Reich Chancellor for positive collaboration in the consolidation of our national, social, economic, and cultural life, and to work for the reconstruction of a state order based on law."

Even the Social Democrat Party partly followed, when the provincial committee of the Social Democrat Party of Württemberg suggested to the holders of their mandates

> "...to carry on their activity in such a way as to leave no doubt as to their national sentiments or their good will to support Germany's new political structure according to the plans of the national revolution."

The attitude of the masses, similarly influenced, is reflected in the results of the Reichstag election of 12 November 1933, in which over 90 percent of the electors voted for the NSDAP. I am aware of the fact that the correctness of these election results and the method of carrying out the election have been questioned. Whatever may have happened in regard to influencing and falsifying the election, one thing must have been clear to any impartial observer of the conditions prevailing at that time: that such manipulations can hardly have been of such significance that they could by themselves have brought about an overwhelming majority. It cannot be denied that in the conditions as they were at that time the majority of the voters, in the hope of bringing about a change of the existing difficult situation, put their trust in the Party, in which they believed they already saw the partial success of its economic measures. If one considers how the ideas of the Party had taken hold of the masses, and how the idea of the Party centered around the personality of Adolf Hitler, the result of the voting and the public feeling at the time was in itself a confirmation of the leadership idea. The vote was a *carte blanche* for the Supreme Party Leader, the Leader of the Cabinet, the Reich Chancellor.

By this development, Hitler's claim to power was strengthened on the one hand, while on the other most of the Cabinet members did not feel that they ought to prevent such a development. These considerations may also have been influenced by the realization that they could not effectively oppose Hitler's seizure of power. In the main one restricted oneself, therefore, to seeking to avoid a radical development and, as far as possible, to render less rigorous those changes made outside the state apparatus. Thus we see legislation clearing up a situation created from without, giving it legally a more moderate orderly form. If the members of the Cabinet are reproached for moderating illegal conditions and yet at the same time giving them a legal basis, such reproaches should mainly be directed at the men from the non-radical camp in the Cabinet. When the Reich Cabinet was formed, they had been appointed with intent to restrict National Socialist influence, but later they failed to use all their efforts to stem the disastrous development. They should have warned the easily-influenced irrational masses and even have resigned from office, protesting loudly. It is idle to examine whether the conduct of these men was politically right or not, whether they were weak men who believed that they should avoid a perhaps hopeless resistance. The criminal aspect of these things can really only be judged from the angle as to whether it could be discerned at that time that the development was a preparation for the things that happened later and which are indicted under the Charter. If by the formation of the Cabinet a real revolution, a civil war, was

avoided, they were entitled to believe that they might thus at least sacrifice something to popular feeling in order to avoid a dangerous reaction of the incited masses. It was not unreasonable to hope that this trend would remain within the bounds of legality and reason and find its natural level. Politically, this was doubtless a false idea. The radical tendencies of those who even after that kept tending towards extremes were underestimated. It must be borne in mind, however, that those Cabinet members who came from the non-radical parties still clung to the idea that the responsible leader of the State would bring reason to bear and call a halt to this trend.

Those ministers who did not agree with this course tried to halt the development, but with diminishing success. Their attempts met with still less success when the authority of the Reich President, the weight of the bourgeois Right and the position of the Reichswehr ceased to form a counter-balance. Hitler understood how to use Hindenburg for his own purpose. The bourgeois Right no longer presented a closely united front; many dissented and went over to the National Socialists. The parties dissolved themselves, and their followers were now robbed of their cohesion; Blomberg became a follower of Hitler. The ministers concerned had no support from any other quarter. Hitler made full use of the fact that he had been called by the people and that he was solely responsible to the people. To make open protest would have been impossible. The publication of Papen's Marburg speech was prohibited; his exit from the Cabinet as the result of this only served to make the circle of ministers dissatisfied with developments smaller and thereby less influential. Any minister who entertained thoughts of resigning knew that his post would be filled by a new man who would not hinder, but would only further this development. Any minister who really had the interests of his department at heart did not like the idea of transferring his field of work into these new hands. It is clear that those who were confronted with this question did not want to endanger that which they in their fields of activity had laboriously achieved by curbing and correcting the effects of the laws, in conducting their policy as regards personnel and in other ways, and all they wanted to do was to continue this work also in the future.

The Head of the State Law of 1 August 1934 is the legal conclusion and the final word of the previous development. It is a Cabinet law. Hitler demanded the consolidation of his office with that of Reich President. According to his declaration this consolidation was not to be the final solution; only the momentary situation was to be considered, which was that he personally would not recognize a new head of the State above himself, although on the other hand he could not give up his office as Reich Chancellor. He

pointed out that this measure would be sanctioned by a referendum, to take place after the death of Hindenburg. In this state of affairs the Cabinet did not consider themselves able to oppose the demand of Hitler. The result of the plebiscite was a foregone conclusion. In any case Hitler would have achieved his aim, even if the Cabinet had refused to pass the law. The Cabinet law of 1 August 1934 is therefore actually nothing but a preparatory law, which in any case could be and was achieved by a plebiscite. The legal sanctioning of the dictatorship therefore was only a confirmation of the powers held hitherto, and a consequence of the overwhelming will of the people at that time.

This law clarified the situation not only as regards power-policy, but also as regards constitutional law. The law represents the complete establishment of the monocratic principle in the state sector. In his person Hitler consolidated the rights of the Reich President, especially the Emergency Decree Law, with the right of the Reich Chancellor to determine the fundamental principles of policy. As Commander-in-Chief of the Armed Forces he finally held in his hand the strongest instrument of power in the State. Actually every state organ became dependent on his will and had to follow his directions. The Reich Cabinet was not excepted. This became outwardly apparent by the law concerning the oath of the Reich Ministers of 16 October 1934. The new oath for the ministers was the same as the general oath for civil servants and soldiers, and showed that the position of the minister had changed to that of a high-level state official bound by directives.

In line with this legal situation, the working procedure of the Cabinet and the significance of the Cabinet sessions also underwent a change. Insofar as foreign policy decisions were concerned, Hitler only announced what his resolve was, mostly in one long monologue on the general political situation. Later on he only informed the Cabinet of the accomplished facts. He informed the Cabinet of the occupation of the Rhineland after the troops had already entered it. In the case of fundamental domestic political measures, for example the Nuremberg Laws, the Cabinet was not previously consulted. The majority of the ministers were surprised when the law was proposed in the Reichstag Session of the Nuremberg Party Rally. In the drafting of minor laws of administrative importance only the completed draft and the reasons for it were submitted. In order to avoid the expression of departmental objections in a Cabinet session, the drafts were previously made "cabinet-ripe" in accordance with a directive of Hitler, that is to say, the departmental ministers were given the opportunity in a preliminary discussion to voice their departmental objections to the minister responsible for the initial draft. Only after these

objections had been removed did the draft reach the Cabinet session. Therefore, no allowance was made for a consultation in the Cabinet session. General political considerations which concerned these drafts were subject to the sole decision of Hitler. If therefore a general political question did arise, about which Hitler's point of view was not yet known, the department was not able to deal with it until his directive had been obtained. Thus the Cabinet sessions not only lacked all political significance, but also all practical purpose. Hitler therefore convoked the Cabinet at less and less frequent intervals, until finally, after a last session in February 1938, which was merely called to listen to a statement by Hitler, no further Cabinet sessions whatsoever took place.

Henceforth the Cabinet sessions were completely replaced by circulation procedure. The working minister submitted the bills to the other members of the Cabinet to enable them to raise objections in their own departmental fields. It stands to reason that basic political questions and political measures which Hitler decided as he saw fit were never dealt with by the circulation procedure. As was shown during the hearing of the witnesses, most of the ministers did not know any more about important political events than any other person. In most cases they learnt of the facts afterwards by press or radio, unless it happened that something leaked through to them through secret channels which they too were forbidden to use. This may have happened more frequently in the sphere of the ministers than elsewhere. But this casual information did not give a comprehensive and authenticated total picture of the actual situation. Only the few close confidants of Hitler were really fully and authentically acquainted with the events. This confidence, however, was not necessarily given to a person occupying the post of a minister. The overwhelming majority of the ministers who did not belong to this close circle learned for example of the march into Austria, of the setting-up of a Protectorate, and of the introduction of the various war measures only after the measures had become effective and been publicized.

The circulation procedure did not bring about any personal cohesion among the ministers. Even though as a rule the bills were submitted to all ministers—although this was not always done, as shown by Schacht's testimony—this did not mean a joint collaboration among all the ministers. This was only done to enable each minister to examine whether the interests of his department might be affected by the draft. The individual minister was thereby more strictly limited to his particular department. His task was merely to submit the objections of his department and to see to it that the powers of his department were not diminished

or its competence impugned. Departmental interests are special interests and if things are restricted to them no room is left for general aims and purposes. The whole manner and form of the circulation procedure was designed to avoid close co-operation among the ministers.

In the last phase of the development this intention of Hitler manifests itself clearly and openly. The hearing of the witnesses has shown that his ministers, except for the very small number who enjoyed his confidence, were not allowed access to him for years on end and that all efforts of the ministers to this end were in vain. Several ministers made attempts to have the Cabinet meetings reintroduced, thus to provide an opportunity to express their opinion and obtain information. Hitler refused this with the remark that he wished to have nothing more to do with this defeatists' club. He even forbade a personal gathering of the ministers arranged by Lammers in the form of an evening beer party.

If the Prosecution work on the assumption that the Cabinet members as a group held the authoritative power in the conduct of the State and wilfully directed its whole policy towards a contemplated, unlawful war, then it can be said in rebuttal that the Cabinet had disintegrated and was no longer a cohesive whole; out of this there had evolved a single directing head in the person of Hitler. Other facts too, prove that there was no functional cohesion between the ministers. Between Hitler's directives and their execution by the departments of the individual ministers, high-level offices were inserted, which, in their turn, had authority to issue directives to the minister. The departmental minister was thereby even further removed from the headquarters of the decisive authority; he was now merely the executive agent of two superimposed directing offices. The "Delegate for the Four Year Plan," the "Ministerial Council for the Defense of the Reich," the "Plenipotentiary General for the Allocation of Labor," and similar offices were created by Hitler himself and provided with full legislative powers by him personally. Not only were these offices able to compel the departmental minister to issue specific administrative directives and ordinances, but, what is more, they could themselves issue these directives to the subordinate offices over the heads of the departmental ministers. This dismemberment was obviously brought about by Hitler intentionally. The Cabinet as an apparatus for the execution of his legislative orders seemed too unwieldy, too complicated and too obstructive, and the position of the minister in his department still too independent. He therefore delegated legislative power to isolated or minor groups who, as men enjoying his special trust, insured the prompt execution of his wishes. By the creation of these new subordinate offices, he restricted the power

of the department. Amidst the confusion of the complex relations between the various levels, the difficulty of defining where competencies and authorities began and ended, Hitler's order was the ultimate remedy, the sole reliable guide. His directive now became more than ever indispensable, and the ministers had to refer to it. The picture given by the Prosecution of a close group assembled in Cabinet sessions and functioning efficiently is thus considerably altered. An entirely new state apparatus was put into operation, a culmination of absolute powers in the person of Hitler, with an intermediate stratum, introduced by Hitler and subordinate only to him, in the form of the newly-created institutions discussed above, headed by men who were not all members of the Reich Cabinet as defined by the Prosecution, and finally the various departmental ministers as executive organs, who in this organizational structure were naturally restricted solely to their own field of work.

Finally the keeping of absolute secrecy by Hitler was a further factor which prevented the ministers from combining. No minister was to know more than was absolutely necessary for him to carry out the task specially assigned to him. Even things which happened in his own department could be kept secret from the minister. I refer to the affidavit of Harmening, from which it appears that the state secretary was entrusted with the preparations for the intended war with Russia over the head of the minister and was ordered to keep it secret from his minister. No clearer proof is needed to show that Hitler revealed his plans only to those to whom he entrusted the task of carrying them out, and whom he considered specially suited for it, irrespective of the position they held.

Everything which in a democratic government is considered a matter concerning everybody, which affects the entire Cabinet, is here shifted to one department and considered as its exclusive task. What really should be an affair of the Government is simply labelled an administrative task, and then dealt with by simple administrative instructions. It was dealt with behind the closed walls of the department into which no other minister had the right or opportunity to peer. As an example of this I refer to the handling of the concentration camps and the later so-called "final solution of the Jewish question." By virtue of a special mandate issued by Hitler, Himmler handled this question as a purely administrative matter for which his department alone was competent. Also, this departmental matter came under the ban of secrecy. This development must be considered over and against the line taken by the Prosecution that the entire Cabinet from the very beginning had worked in the closest secrecy with Hitler in planning

and carrying out the illegal war. The confidential collaboration necessary for the execution of a common conspiracy can in no way be reconciled with the development as described. Hitler's endeavor to curtail and control in every way the ministers' field of responsibility, his endeavor to replace the total joint responsibility of the Cabinet by a single department, the establishment of super-departmental central offices outside the Cabinet, his endeavor to prevent even personal contact between the ministers—all these things are in no way compatible with the theory of the Prosecution.

Notwithstanding this, if I am to fulfill my duty as counsel, I must examine whether the group of persons outlined by the Prosecution did conceive the idea of planning and executing the crimes mentioned in the Charter, and if so, when.

Various statements by the Prosecution seem to indicate that the date on which the Prosecution assumes this to have started is placed as early as 30 January 1933, the day the Cabinet was formed. It would consequently be only logical to assert that the purpose for which the Cabinet was formed was in itself criminal. In this connection I need say little, and would merely refer to the statement which I made in defense of the Defendant Von Papen. I wish to supplement the reasons I gave then by adding the statement which Brüning made in 1932 to the Minister Count Schwerin-Krosigk. I refer to my Affidavits Numbers 1 and 3. Brüning, who at that time was the responsible Chancellor of the Reich, already admitted the impossibility, if the economic and political crisis persisted, of continuing to govern almost exclusively with the emergency powers of the Reich President. He declared that the agitation of the National Socialists could be effectively combated only by obliging them to take responsibility. It is interesting to hear this statesman, who had such a pronounced sense of responsibility, confirm at such an early date that which 6 months later became a fact.

This political development arising from the needs of the moment, together with the constitutional necessity of forming a Cabinet, and the heterogeneous composition of this group, in any case give the lie to any criminal intention by the formation of the Cabinet. In addition I would like to say that negotiations with individual members of the Cabinet took place only on a very small scale, that a large number of members were taken over into the new Cabinet because of their former membership in the Government, simply because the Reich President, Von Hindenburg, had requested it. If the forming of the Cabinet is assumed to be a criminal act then this cannot be reconciled with the fact that Hindenburg, who was responsible constitutionally for the formation of the Cabinet, and indeed was very active in doing so, is not mentioned in the list of

persons set out by the Prosecution in Appendices A and B. Since deceased members were also mentioned by name, and the group of Cabinet members was not outlined according to formal constitutional law, but drawn up from the practical standpoint, I believe I can deduce from this fact that the Prosecution do not consider the formation of the Reich Cabinet on 30 January 1933 to be a criminal act. At least the Prosecution assume the existence of a common plan for the commission of crimes mentioned in the Charter even before the Cabinet started its activity, and see in the development of the legislative work of the Cabinet a reason to assume a common aim to plan and carry out an unlawful war. I will now leave the discussion of these alleged indications and consider a date which is of particular moment for this question.

It is the 5th of November 1937, the day of the conference between Hitler and his War Minister, the three commanders-in-chief of the Services, and the Foreign Minister, at which he expounded his future plans. I need not open again the discussions started by counsel for the various defendants as to whether Hitler gave a true and complete account of his plans to those present. His statement dicloses at least one thing: that he first informed only a very limited circle of his plans. If he here admitted that he was revealing his most secret plans to those present, and that he had purposely refrained from informing the Cabinet—as is customary in other countries—of such far-reaching decisions, it is clear that he mentioned these things for the first time to his chosen circle, and that he was particularly anxious that the remaining Cabinet members should continue to be kept in the dark about his plans. Hitler expounded the view that it was necessary for war to come soon. He asserted that he had come to this conclusion in the course of his 4 years of rule, and that this conclusion was the result of the experiences gained during this time, that economic measures would not give the nation the means to live. Even if we should be skeptical about the truth of this declaration of Hitler's, one thing is certain: there cannot have been a common plan for a criminal war uniting Hitler and all the members of the Cabinet since 30 January 1933, as stated by the Prosecution, if on 5 November 1937 he announced to a number of these Cabinet members that he had arrived at this decision, which involved planning for war, in that very hour as a result of his observation of developments during the past 4 years. If Hitler, when making this statement, goes out of his way to say that the remaining Cabinet members are excluded from this knowledge, it clearly shows that he does not consider the Cabinet as such to be the right circle to receive information about plans of this kind. Thus it is clearly proved that, at least up to this date, no such common plan existed in the Cabinet,

a plan which could only have come into being under the leadership of Hitler.

At what date after 5 November 1937 could such a common plan have been decided on? Only one more Cabinet meeting took place, on 4 February 1938, at which Hitler merely informed those present of the changes in personnel without making known the reasons for them. The question of war plans was not touched upon in any way whatsoever. If the Prosecution construe the right to take part in the Cabinet meetings as proof of a mutual bond between the Cabinet members, they will have to accept the contention of the other side that such a bond no longer existed in the ensuing period. To a certain extent the circulation procedure now generally adopted took the place of the Cabinet meetings. It should however be borne in mind that the circulation procedure was perhaps a suitable method for pursuing a previously existing collective purpose by means of separate acts of legislation; on the other hand, it is unthinkable that this written circulation procedure could be the vehicle for such common planning of so comprehensive a crime. In the case of such a decision, which because of its very nature had to be secret, there must be some sort of connection in point of locality. Within the bounds of a Cabinet meeting this would have been possible. In a discussion of documents by means of a circulation procedure this would appear to be impossible. Over and above all these considerations it must also be affirmed that according to the whole of the evidence such a plan to start a forbidden war was never communicated to the Cabinet, let alone discussed or even commonly conceived.

I have still to deal with the supposition of the Prosecution that the legislative activity of the Cabinet was wholly directed towards the planning of a war of aggression. The Prosecution believes that the purpose of the legislation was to give Hitler complete control, to consolidate that control, and thus prepare and carry through the war of aggression.

The Prosecution are aware that neither the establishment of totalitarian control nor the individual decrees issued by the Cabinet constitute a crime under the Charter. They believe, however, that they are able to establish a relation between this totalitarian control or the individual decrees and the crimes of the Charter, claiming that the plan was purposely designed from the first to commit crimes set forth in the Charter. To attain this aim, and to avoid any opposition to the planning, the totalitarian control of Germany was necessary. A number of decrees issued by the Cabinet would bring about its establishment.

Some of these laws pointed directly to the aim pursued. Others, by their terroristic and inhuman nature, showed that they were

directed towards this goal. The Prosecution follow the assumption that dictatorship was a prerequisite for the subsequent crimes mentioned in the Charter, and that the establishment of the dictatorship was a part of the plan for the crimes mentioned in the Charter.

In rebuttal it must be stated that it is impossible to conclude a cause from an effect, in order to prove that the cause had of necessity to lead to the effect. This view would be correct only if the establishment of the dictatorship could find its compelling motive in the planning of the crimes. The view breaks down if it could appear that the establishment of the dictatorship was necessary, or even expedient, for other reasons. Such reasons did exist. The call for unified power is a natural phenomenon in times of special crises. A unified power is more quickly able to take measures which are necessary to put an end to the critical conditions. At all times and in all countries there has therefore been a tendency towards unification in times of crisis. This is provided for in the constitutional law of every country. Emergency measures then shift the power from a large body, such as parliament, to a smaller circle. We faced this development in Germany already at a time when we could still be regarded as a country with a democratic government. This is proved by the emergency law, which already in Brüning's time was extensively applied. I have already pointed out at an earlier stage that the idea of unification was further promoted by the Führer concept held by the Party. The people believed that the deeper cause for the economic crisis could be found in the lack of unified leadership. Although the German people had received the gift of purest democracy with the Weimar Constitution, in their whole past they had not been educated for it. The gradual, organic development towards free democratic thinking and the education for critical judgment were lacking. This psychologically explains why, when the democratic republic was in great economic difficulties, the cause was not seen in the actual conditions themselves, but was sought in the lack of unified leadership. Consequently, the idea of the Führer principle and of placing the direction of the people's destinies in the hand of one person was popular. It was reflected in the elections, which in any case had to be taken as a recognition of the principles of the NSDAP, and therefore of the Führer idea. Nor can it be denied that the rigid concentration and orientation of all spheres towards the direction by a single supreme authority did in many ways help to carry through the certainly comprehensive and daring economic measures.

THE PRESIDENT: Shall we break off now?

DR. KUBUSCHOK: Very well, Sir.

[A recess was taken.]

DR. KUBUSCHOK: Before the recess I was saying that considerations of expediency could justify the establishment of a dictatorship. I continue.

The recognition of this alone would furnish the justification, necessary within the framework of considerations based on criminal law, for co-operation of the Cabinet members in the development leading to the dictatorship. In any case this would exclude the unqualified conclusion drawn by the Prosecution, namely, that the establishment of a dictatorship necessarily means the setting of the aim towards aggressive war.

The Prosecution also considers the legislation of the Reich Cabinet, which it views as terroristic and repressive, to be directed towards the establishment and consolidation of a dictatorship having as its aim an aggressive war. In so doing it has particularly in mind the anti-Jewish legislation. This too must be examined here only from the viewpoint of whether in purpose and substance it can actually be regarded as being directed at an aggressive war. The Prosecution pointed out that Himmler in his Posen speech in 1943 stated he was happy to see in this advanced phase of the war that it was no longer possible for the Jews to constitute an internal danger.

Such a statement may, if considered superficially, justify the conclusion that now actually all legislative und administrative measures taken against the Jews to a gradually increasing degree were directed towards achieving the result welcomed by Hitler. Here, however, one will have to differentiate between the restrictions imposed upon the Jews by legislation and what was done to the Jews under Himmler's administration by shutting them up in concentration camps and exterminating them. Only the last-mentioned measures, the segregation of the Jews from the rest of the population, their complete isolation in Polish ghettos and concentration camps, and finally their physical annihilation, constituted what Himmler could consider making the conduct of the war easier. As compared with this, not one of the laws issued by the Reich Cabinet, even the Nuremberg Laws passed by the Reichstag, while undoubtedly unqualified measures of repression, provides for the hermetical sealing-off of the Jews from any association with the rest of the population. The laws finally led to the Jews' being excluded from public positions and the economy and to a restriction of their personal freedom which violates even the most elementary rights of the individual. From their effects it must be recognized that they were aimed at rendering life for the Jews in Germany difficult in every respect. This was coupled with the widely propagated aim of getting Jews to emigrate.

I believe it is precisely this point which goes to prove that the persecution of the Jews, insofar as it was carried out by legislation, did not have an aggressive war as its goal; not even indirectly through the consolidated dictatorship. One cannot set aggressive war as one's goal on the one hand, and on the other hand create by legislative measures a situation which forces emigration on people robbed of the foundation for their very existence. If one wants an aggressive war, it would be the height of folly to expel members from the body of one's own people, thereby making them enemies, and to drive them into foreign countries, into countries which one must consider as the future enemies within the framework of war planning. Thus, I believe that the entire anti-Jewish legislation can be dismissed as not constituting a necessary factor for the commission of the crimes within the meaning of the Charter. I would like to supplement this by saying that a great many of these laws were not passed, as may be thought, with the full agreement of all Cabinet members; the laws clearly show traces of compromise, and reveal that some of the ministers knew how to moderate the general purpose of the law and to limit its effect, as I have already pointed out during the defense of the Defendant Von Papen. The fact that a minister participated in such legislation in no way means that he agreed with the purpose of the law and approved it. In this connection I should like to refer to the statement made during cross-examination by the witness Schlegelberger concerning the letter addressed by him to Lammers. Schlegelberger states that some Party agency, probably the SS Office for Race, intended to remove all partly Jewish persons to the East. In this instance the Ministry of Justice had an opportunity of stating its point of view in connection with a divorce question. The stand he first took, as outlined in the letter addressed to Lammers, and which merely consisted in rejecting the contemplated measure, was of no avail. He therefore felt obliged to moderate the measure by some practical proposal. Hence his proposal, which deals with the prevention of any issue of mixed race, as desired by the Race Office, and which suggests exempting all those persons of mixed race from whom no further offspring can be expected. In this connection, he also proposes that a person of mixed race should be exempted from being sent to the East if he agrees to be sterilized. In considering such a proposal, it is difficult to disregard human sentiments, and to judge it with the objectivity necessary in a trial. But in this instance one can only come to the conclusion that here an attempt was made, admittedly barbaric, to avoid even worse and inescapable measures. Certainly it is a problem to determine how far one may participate in one evil in order to prevent another still greater evil. In any case the motives must be considered here too. When dealing with the case

in point, the main thing is that even the Schlegelberger proposal desired to avoid at least the geographical elimination of persons of mixed race from the German population. Bearing in mind the points of view expressed by Himmler in his speech at Posen, this alone is a determining factor when considering the war of aggression.

Turning now to the further legislation, there is no need to deal with such as was introduced before 30 June 1934. I refer here to my statements in the Papen case.

The Law of 3 July 1934, by which the measures of 30 June were justified, is considered by the Prosecution as the first law of open injustice, by which crimes were subsequently sanctioned. Here also one will have to concede that the measures on 30 June 1934 had no relation to the planning of a war of aggression. What Röhm himself planned, and to what extent he worked with any of the Reichswehr agencies, cannot be determined. In any case, the elimination of a man like Röhm and his followers cannot be considered as the elimination of an obstacle in the way of a war of aggression. If other Hitler opponents were killed, who certainly had nothing to do with Röhm, then that is plainly a case of murder, but here too, especially in view of the personalities concerned, this cannot be brought into relation with a war of aggression.

The law itself, in substance, exempts from punishment only those who assisted "in defeating aims of high treason and treason." Thus, the law does not cover those cases which concern persons outside the "Röhm circle." Some of them were sentenced, and some Hitler exempted from punishment by virtue of his right of reprieve.

In this connection I refer to the affidavits of Meissner and Count Schwerin-Krosigk, as well as to the statements of the witness Schlegelberger. Most of the ministers knew that a tension existed between Hitler and Röhm. The actual events surprised them. The statements concerning the events which Hitler made at the Cabinet meeting of 3 July 1934 were essentially the same as his declarations made to the Reichstag meeting of 13 July 1934. On the basis of this description the ministers could not help being of the overwhelming opinion that it was really a case of high treason, and that the immediate defensive measures taken by Hitler were necessary in order to prevent the revolt from spreading. Hitler admitted himself that some excesses had occurred and that persons were seized who had nothing to do with the revolt. For these cases he promised a legal inquiry.

If the law in its wording actually limited itself to the persons who participated in the revolt, then the ministers thought that they could answer for this law. One may have misgivings about

this law, but one must not disregard the fact that by crushing of this revolt it could be thought that a state of constant disorder and acts of violence by the Röhm followers were done away with once and for all. Therefore one cannot conclude from this law that it would be an accepted rule, also in the future, that measures which were not justified by formal law would be sanctioned afterwards and placed outside the regular channels of law. It may appear justified that one should wish to do away legally and once and for all with this problem of unrest, particularly since the guilt in the cases dealt with by the law appeared to be evident. In any case, many at that time interpreted this legal treatment of the case to mean that the principle of the obligation to prosecute political crimes also was maintained.

The laws connected with rearmament have been specially singled out by the Prosecution and thereby alleged to point to the plan for aggressive war. In this connection the Prosecution mentions the formation of a Reich Defense Council in April 1933, and the two secret Reich Defense Laws of 1935 and 1938.

In his testimony the Defendant Keitel stated that as early as 1929 an interministerial working committee had been formed to deal with questions of Reich defense. This committee was not in the least concerned with operational or strategic questions, or with questions of armament or procurement of war material. On the contrary, it dealt exclusively with measures which had to be taken in the civil sector in the event of the Reich being drawn into a war. Chief among the measures of this category were the preparations for evacuation in case of war—undeniably a defensive measure.

There was no change in the technical work of the committee when in April 1933, instead of the voluntary collaboration of individual experts from the ministries, every minister was obliged to send an expert to the commission. It was only for this purpose that the ministers grouped together to form the Reich Defense Council. This council never worked as a group or held consultations; the work was done in the same manner as hitherto on the Reich Defense Committee. A survey of the work it did can be found in the *Mobilization Book for Civilian Authorities*, published in 1939, which contained a list of the administrative measures to be taken by the civil authorities in case of a mobilization. The contents of the book in no way show an aggressive intent. The preparations that were made were obvious state security measures for the event of war. One cannot conclude either that a war of aggression was being planned because the work of the committee was kept secret. It is only natural and a generally accepted fact that measures for the defense of a country are not revealed to the public.

The work of the Reich Defense Committee continued until the outbreak of the war. Nor did it change when the unpublished Reich Defense Law of 21 May 1935 finally gave a legal basis to the Reich Defense Council, which had been founded in April 1933 through an internal Cabinet decision.

As the interrogation of Göring, Lammers, Schacht, Keitel, and Neurath has shown, this Reich Defense Council did not hold a single meeting. There was not a single conference, nor was the procedure of circulating questionnaires to consult members ever employed. It merely carried on the work of the Reich Defense Committee, which has already been discussed here. The Reich Defense Council was merely an over-all organization for the committee.

By the Reich Defense Law of 21 May 1935 the position of the Plenipotentiary for War Economy was also created. He was given the right already in peacetime to secure the economic forces for the event of a war and to give directions to this end. Actually, Schacht, as Plenipotentiary for War Economy, did not take any measures in his official capacity. In practice, already in 1936 these tasks were given to the Delegate for the Four Year Plan. Here again it must be pointed out that organizational and precautionary measures for the event of a war are an ordinary procedure. By themselves they cannot in any way be considered proof of aggressive intentions. To take economic measures for the event of a war was an absolute necessity for Germany, owing to her dangerously exposed economic and geographical position in the event of a war. One could not afford to await the outbreak of a war to make the organizational preparations, because an uncontrolled German industry would not have been able to survive in case of war.

In condemning this purely defensive preparation the Prosecution stated that defensive measures were uncalled-for because no country had the intention of attacking Germany. In answer to this, it must be pointed out that it is the responsibility of the leaders of a country, where vital questions are concerned, to take precautions for even the remotest eventualities. There is never a time when a country can completely exclude the possibility of sooner or later being drawn into a war from the outside.

When changes came about in the leadership of the Armed Forces through Hitler's decree of 4 February 1938, it was not at first noticed, because the Reich Defense Council never met, that its personnel composition according to the Reich Defense Law of 1935 was no longer in line with the new decree. It was only when Keitel, as head of the council, pointed them out that these discrepancies were removed by the new Reich Defense Law of 4 September 1938, and at the same time—in the Nazi regime people were generous as

regards organizational matters and they went in for ballyhoo and boosting—a huge apparatus was set up. The Reich Defense Council was remodeled; the committee suffered some change in its personnel. In addition to the "Plenipotentiary for War Economy," a "Plenipotentiary for Administration" was created. Both of these, together with the Chief of the OKW, formed the "Three Man College"; and most of the other ministers were subordinated to them in separate groups. The whole apparatus, with the exception of the committee, was to start to function only after the outbreak of a war, when the extensive legislative powers of the "Three Man College" were also to become effective. However, when the war did break out, Hitler did not concern himself with these preparations on paper, but set up the Council of Ministers for the Defense of the Reich, which virtually replaced the organizations existing hitherto. Only later, when the legislative machine of the Council of Ministers was found to be too slow, did the authority of the "Three Man College" appear again, and decrees were based on its decisions. Even if it was the duty of the "Three Man College", just as generally it is the duty of every department, to have ready in its own particular field those measures which are necessary in a purely defensive sense, one cannot infer from this any aggressive intentions, or even consciousness of an approaching war. Such general war preparations are of necessity based on the supposition of the possibility of war. There is no indication in them of aggressive intentions. If there were, then one would be forced to the conclusion that every country was latently planning aggression, since no state can afford not to make such preparations.

The "Three Man College" did not hold any conference until the outbreak of the war, and therefore could neither have worked towards a war nor made any plans for a war of aggression. The same is true of the Reich Defense Council. It did meet twice, but how very unimportant these meetings were, and what is more, how little suited they were to the drawing-up of secret plans, is shown by the fact that of the 12 members of the council only a few were present, whereas there was a very large number of experts from the individual departments. The large number of persons who attended—at one meeting about 40 and at the other as many as 70—would have made it impossible to discuss a subject which required to be handled so discreetly. As a matter of fact, the business of these two meetings was limited to the Defendant Göring's announcing part of the contents of the unpublished Reich Defense Law. Apart from that there were no meetings or written discussions with the members of the council.

Therefore, in summing up it can only be said that an organization had been created for the event of a war, but that in practice

it never functioned. If the purpose of this organization really had been the preparation of a war of aggression, then, in view of the great number of tasks which it would have been necessary to undertake because of the time factor, the organization would have had to start work already in peacetime.

The "Law Concerning the Rebuilding of the Wehrmacht" of 16 March 1935 and the "Military Service Law" of 21 May 1935 have also been made the subject of argument by the Prosecution. I do not wish to discuss at this point whether these laws constitute a violation of the Versailles Treaty or not, since the only thing that is relevant for the judgment is whether the fact of the issue of these laws can be considered as proof of plans of aggression. The necessary publication of the entire contents of these laws alone shows that they were not the basis for such a plan. The limitation to a comparatively small number of divisions in the law of 16 March 1935 excludes any idea of a war of aggression.

Neither is the introduction of compulsory military service an indication of a plan of aggression. Compulsory military service was introduced, as in most countries, and apart from its resulting in an increase of fighting reserves, it undoubtedly also had certain non-material advantages.

In order to judge these laws which concerned the military organization, it must be borne in mind that the introduction of compulsory military service in March 1935 called for a new set-up of the military organization. In previous years practically nothing had been planned in this field. It was not surprising, therefore, that a decree was now issued containing the principles required. This complete and necessary reshaping of an organization demanded the passing of the laws in question, but it provides no grounds for concluding that a war was being planned.

As regards the question of whether all the Cabinet members were informed of the situation, we need not establish whether at the outbreak of war German armament was really ready for an attack or not. The legal basis—it was only from this aspect that the majority of Cabinet members had to deal within their departments with questions of rearmament—could give no comprehensive insight into the actual extent of rearmament. They were dependent upon whatever information was furnished them. Judging by the extent of the rearmament, the generals themselves were of the opinion that it could only have a defensive nature. Hitler himself told them nothing about any aim at an aggressive war.

Finally, mention must be made of the law of 13 March 1938 which announced Austria's Anschluss to Germany. This law was not passed by all of the Cabinet members. The ministers had not previously been informed in any way of the march of events. They

merely received word in the usual way about the entry of the troops. As regards the other laws brought up by the Prosecution, the idea that they should have any connection with the planning of a war of aggression is, in my opinion, so far-fetched that I need not go into them in detail. There are factual reasons for the creation of these laws which cannot be denied. These are contained in the official preamble of the bills, as shown in my document book. These preambles were added to the bills in the course of circulation, and informed the ministers of the meaning and purpose of the law. Moreover, these laws were issued at a time when, as I have explained above, there was no longer any cohesion among the Cabinet members. This is especially true of those laws which were issued during the war and which have not been mentioned in detail by the Prosecution. At this period the Cabinet can no longer be considered as functioning collectively in any way. At that time the complete reorganization of the legislative procedure was already visible to the outside world by the fact that the essential laws were issued by the newly-created offices endowed with full legislative powers and set up for the different spheres of activity. Stress was laid on the Führer decrees and the Führer orders, especially as regards all fundamental and general political questions. From the very start, this excluded the ministers from any other functions save the purely departmental, subordinate work. The idea of a Cabinet working in unison, with the members making free decisions, had for a long time been nothing but a myth. Consequently, the responsibility for each individual law can be placed upon the individual minister or ministers who participated in making it, but not upon the Cabinet.

The Prosecution sees in the activity of the Reich Cabinet the aim to commit the crimes mentioned in the Charter, more especially in the fact that a close connection existed between the highest Reich offices and the Party. Individual ministers are alleged to have held the highest Party offices. The "Law To Insure Unity of Party and State" is said to have brought about co-operation between the Party and the state offices. By this infiltration of the Party into Government leadership, Party ideas had actually become part and parcel of Government leadership.

In reality, neither the "Law To Insure Unity between Party and State" nor later decrees could secure full co-operation of the Government with the Party. It was here that the differences of opinion between the ministers and the leading Party offices were most marked. The ministers looked on their tasks in the administration as purely matters of State. The Party had to struggle constantly, supported by Hitler's decrees, to have a bigger say in the affairs of the state offices. The witness Schlegelberger has given a clear account of this. He declared that a considerable part of the work

in the state offices, especially in the Ministry of Justice of which he himself was the head, was directed to warding off the repeated attempts of the Party offices to make their influence felt. We saw Führer decrees which were supposed to accomplish this up till the very end of the war—an indication that the Party never fully succeeded in its intended penetration into the Government administration. It is, therefore, not possible to follow the Prosecution in its claim that owing to the infiltration of the Party the state apparatus was really an instrument of the Party.

In summing up I therefore come to the conclusion that the proceedings have in no way proved that collectively the members of the groups included in the Indictment ever desired a war of aggression and its criminal consequences as stated in the articles of the Charter, or that they even set it up as their goal and directed all their activities towards it. As long as it is at all possible to speak of a certain cohesion in the Cabinet, that is, until the death of Hindenburg in 1934, probably not even Hitler had any clear conception of this aim. Even if he himself had perhaps reckoned with this possibility and taken it into account in his decisions, nevertheless all the circumstances show that the group of people indicated here were the least suitable to be informed of such plans or even possibilities. The fact that on 5 November 1937 Hitler did not consider he could have sufficient confidence in the Cabinet to reveal to it his intentions, that he made even greater efforts to divide the Cabinet and carried his secrecy so far as to withhold from the competent minister preparations which concerned a certain department, as in the case of Darré, divulging them only to some expert official, shows quite plainly that collectively the Cabinet neither had knowledge of the alleged aim nor could have directed its activities towards it. If the theory of the Prosecution were correct, Hitler would have left the existing organization as it was and would not have completely reshuffled the key positions. His alleged loyal followers in the conspiracy, once the common plan had been conceived, would have been best suited to carry it out. Also, when we consider the persons forming the Cabinet, it seems absurd to imagine so close and intimate a collaboration between its members and Hitler. Here were men from the most widely divergent camps. The ministers of the individual departments, of whom some had been taken over by Hitler and others newly assigned, were not all of them his party followers. Most of them had had no close connection with him. It is impossible to explain psychologically how and when Hitler should have won over these people not only to share his Party ideas for the achievement of the common aim but also to commit the capital crimes of the Charter. Furthermore, we see a constant change in the composition of the Cabinet. People like Hugenberg, Papen, Schmidt, Eltz von Rübenach, and Schacht left the Cabinet. All of

them had differences with Hitler, some of which were for far less weighty reasons than the crimes mentioned in the Charter. But according to the Indictment all these people, from the very start of their activities as ministers, are alleged to have acquiesced blindly in the criminal plot. Does it seem probable—to mention only the case of Eltz von Rübenach, which has been brought up by the Prosecution—that when receiving the golden insignia of the Party a man should express his religious scruples against Nazi ideas, if on the other hand he was already involved in such criminal aims and had worked for them for years? Is it not clear from his letter to Hitler that he had no doubts as to the integrity of the work of the Cabinet? How could a man like Minister Popitz, who paid for his active opposition with his life as one of the conspirators in the plot of 20 July 1944, be connected with such aims and their attainment?

The circle of persons mentioned in the Indictment under the conception of "Reich Cabinet" is small. It is precisely this fact which shows how dangerous it is to attempt to define the character of a group of persons, and at the same time of an individual, by means of the declaration sought by the Prosecution.

The Indictment is directed particularly against the Secret Cabinet Council and the Council of Ministers for the Defense of the Reich. I need say little about the Secret Cabinet Council. It never met, and so never took any decisions or displayed any activity. It was founded for personal reasons connected with the departure of the Foreign Minister Von Neurath. In this Cabinet council, which was merely called into being by a law, but which in reality was never active, it would not have been possible to elaborate or execute plans.

The Council of Ministers for the Defense of the Reich had been founded by a decree of Hitler at the start of the war. It is incomprehensible to me on what grounds the Prosecution should single out this Council of Ministers in the Indictment as a separate institution within the framework of the Reich Cabinet. All its members belong to the Cabinet and, except for Lammers, they are all present in the dock. It can therefore have no practical value for the declaration asked for with regard to the number of people accused, unless the Prosecution themselves have doubts as to the acceptance of their arguments concerning the Cabinet and want to insure the sentencing of at least this part of the Cabinet members, as a minimum of their Indictment.

My arguments for the Reich Cabinet are equally valid for the Council of Ministers. Moreover, the Prosecution have omitted to make any statements in support of their assertion of participation in the Charter crimes.

It is clear to me that the scope of this Trial makes it impossible to establish, even in the small circle of the Cabinet members, the intentions, acts, and motives of individual members. The precept in Article 9 of the Charter is not an inflexible precept. It should make provision for the inclusion of a greater number of persons. The case of the Reich Cabinet embraces a numerically small circle; 17 of them are present in the dock. Apart from these only 20 are still alive. It is quite possible by ordinary and legal means to form a clear judgment of their former activities, both objectively and subjectively, by separate proceedings. This is also necessary in view of their former important place in public life. To put all of them now into one category and by the verdict to outlaw all of them, including those members who are dead, and to deprive them in subsequent proceedings of an argument which would affect an essential part of their defense—for this there are no reasons of any practical nature. In the case of the Reich Cabinet, considerations of expediency should not lead to the sacrifice of the universal principles of legal life for the sake of practical requirements.

Finally, I feel obliged to express the following idea which generally touches the problem of the organizations: Mr. Justice Jackson said that considerations of expediency could also influence the verdict asked for by the Prosecution. He believed that otherwise a great number of participants in the crimes would not be included. Some of the anonymous perpetrators would perhaps remain in the background. He believes that one can also see a political reason for the verdict asked for in the principle that the "good ones" should be separated from the "bad ones."

I have explained in my statements that a general condemnation of an organization would necessarily and ultimately include in the essential points a condemnation of possibly innocent persons. But is this sacrifice of the absolute principles of justice to considerations of political expediency really necessary, and can it be advocated? Anyhow, will it be possible to attain by this means what it is sought to establish for political reasons?

The greater the circle of persons included in a verdict, the less dishonor does it bring to those affected. If several million members are declared criminals, and if one considers that the dependents and friends of these outlaws are also affected by such a declaration, I believe that whatever it is intended to attain by the separation of "good ones" and "bad ones" will not be accomplished. If the circle is extended in this manner, the person who judges first visualizes those persons who in his opinion neither did nor willed any wrong. The desired result can be attained only if the circle of affected persons is limited to an extent which allows, even when judging critically, a just separation of really bad elements. The possibility

of outlawing morally, and to some extent also physically, a part of the population from the body of the nation is numerically limited. I ask that this also be considered if one has in view the aim of a general appeasement.

Neither do I believe that the verdict applied for is necessary in order to bring to punishment those wrong-doers who up till now have remained anonymous. Those who can be considered as wrong-doers have for the greater part been arrested. Their examination in the internment camps and in the denazification proceedings provides an easy way of determining the real culprits. Therefore, if the condemnation of all members of an organization is not necessary in order to attain the desired aim, the encroachment on the security offered by the law, which such a condemnation necessarily entails, gives rise to serious misgivings.

One of the worst oppressions we in Germany suffered under the Nazi regime was the feeling of legal insecurity. We, who had to deal professionally with these matters, experienced daily what it means for a legal-minded person to know that there was no legal system based on fundamentals and codes to give the individual that protection which alone makes him a free person. This feeling of insecurity, this feeling that on the grounds of some consideration of political expediency one could be pounced upon at any hour by that system based upon violation of this primitive human right, weighed upon every German. Now that the whole situation has changed we all would like to think that these things have been abolished once and for all time. After the experience of the past we consider that the principle of justice in particular must be without compromise. One desires to live with the conviction that only he can lose his freedom whose criminal activity is established beyond question in a legal trial provided with all possible legal guarantees. That is why countless people look with eager expectation to the first tribunal which will help this principle to prevail, and be recognized by the world as an example—this principle which has been trampled under foot for years. All of us who were called to co-operate in these proceedings found this hope strengthened in all phases of the Trial. The Tribunal now faces the decision whether a verdict according to the motion of the Prosecution shall in effect include innocent people too. Representatives of the Prosecution have declared, of course, that by cautious use of the legal possibilities the number of persons to be subsequently prosecuted could be limited to include only such people as are really guilty. However, even if this intention could be carried out in full in all zones of occupation, still in spite of this method, however desirable, the fact remains that the verdict in itself establishes the legal precept and provides the legal possibility for prosecuting the mere fact of membership. Even if one does not agree with the legal aspect of the possibility

I have developed, the legal question concerning material and procedure is of so problematic a nature that for the individual innocent member there is no absolute legal guarantee that he will not be prosecuted. The result would be that a situation would be created in which a great number of people would live in a state of suspense without knowing whether they will ever be prosecuted and sentenced on the basis of legal possibilities.

This applies more especially to the minor cases which in any case would probably be sent back to the national tribunals in order of procedure.

The number of members and their relatives affected by the trial of the organizations is so vast that a situation would be created which would make it impossible for millions to achieve that high purpose which we have set: to regain the feeling of judicial and legal security.

THE PRESIDENT: The Tribunal will adjourn until 2:00 o'clock.

[A recess was taken until 1400 hours.]

Afternoon Session

THE PRESIDENT: The Tribunal has just received an application, dated 18 August, from Dr. Berges; that application is denied.

I now call upon Dr. Böhm.

HERR GEORG BÖHM (Counsel for the SA): Mr. President, High Tribunal: It is in contradiction to the fundamental right of every man to be made responsible only in accordance with the degree of his own guilt if he is subjected, by the possible result of the collective indictment against the organizations, to Law Number 10 of the Allied Control Council. Atonement without guilt has been considered unjust since the beginning of human history. He who desires to punish therefore has to establish the guilt of each individual, if more than one have participated in a crime. If the planning of a crime is considered punishable as an act of preparation, then only those can be punished who, in accordance with hitherto prevailing legal and moral principles, participated in the plan—that is to say, who joined together in deliberate and conscious co-operation for just that purpose.

At no time have the legal principles which I have just explained and which have evolved from fundamental human rights been replaced in the criminal law of any nation by the legal concept of a "conspiracy." Guilt arises within the meaning of the legal conception of the conspiracy advanced by the Chief Prosecutor if: (1) an association existed with a joint and common aim, (2) these aims were criminal, (3) the pursuance of these aims definitely involved the criminal deed, meaning that the latter was foreseeable, and finally, (4) the manner of carrying out the deed was in accordance with means either agreed upon at the time of joining, or else subsequently approved.

We must, therefore, examine the following: (A) to what extent the collective elements of a conspiracy indicated here correspond to the legal concept advanced by the Prosecution; and (B) to what extent these collective elements were brought to realization by the members of the organizations.

Thus viewed, the foregoing elements of a conspiracy as defined not only by German concepts of law, but also in accordance with well-known penal laws of other civilized countries, seem to agree completely with the definition established by the Prosecution in the Court session of 28 February 1946; so that, if we recognize the soundness of this argument, we have only to examine the aforementioned second question, namely, to what extent members of the SA became criminally involved in the commission of such acts as have now been defined in accordance with the elements of the crime in question. This question touches upon a judgment of import and

a question of fact. Primarily, it is a judgment of import, inasmuch as the concept "criminal," which is used in connection with the aims of the organizations, requires a clear definition.

For German subjects, actions committed within the German power sphere can be criminal actions only if they are punishable by the German penal laws. According to hitherto recognized principles of international law, one nation is not bound to consider criminal what other nations consider criminal, but only what this nation has adopted as "criminal" in its own moral and legal consciousness. At any rate, after conscientious investigation of this question we find that the German people without exception—that includes also the mass of the members of the SA indicted in Nuremberg—has never differed in its basic moral and legal attitude from the fundamental laws of the rest of the civilized world. Millions of its members, too, consider a war of aggression a crime as defined in Article 6 of the Charter. Furthermore, no SA members, without exception, would ever argue the point that actions such as defined in Article 6 of the Charter as crimes against humanity have always been contradictory to their principles, too, and will, therefore, from their standpoint deserve to be judged criminal.

Accordingly, apart from the foundation for the Trial, which is contested, it only remains for the Defense to investigate the question of fact as to whether the accused organization, the SA, at any time endeavored to realize such criminal aims, or endeavored to realize permissible aims containing methods of a criminal character. This has been alleged by the Prosecution.

The aims of the accused organizations were clearly outlined by the Party program and its statutes. The means for the realization of these aims found their visible limitation in the Reich laws and regulations published in the *Reichsgesetzblatt*. As an accused organization, the SA can be considered only as an association of persons whose common and general endeavor was exclusively directed towards realizing the aims pointed out to them with means which were permissible under German law. Thus, the aims and the legally restricted means for the realization of these aims, which were openly known not only to the members of the accused organizations but to the entire world, cannot have been considered criminal by the world which not only formally recognized the National Socialist Government even after the union of Party and State was emphasized, despite their knowledge of the aims and legally restricted methods for which this National Socialist Government was responsible, but also gave repeated and visible expression to this recognition before the German people by concluding a whole series of international treaties ending with the Munich Agreement of 29 September 1938, and the Russo-German Non-Aggression Pact and the Secret Amendment of 24 August 1939.

The criminal character of the SA alleged by the Prosecution therefore must be proved differently than by merely referring to a criminal character of the National Socialist idea in itself. If the idea itself is not already criminal, then the criminal character of an organization serving to carry out this idea can be derived, if at all, only from the criminal methods which, to use a phrase of the Tribunal, "were so completely evident, or had become so generally known to the members of the accused organization in some other way, that it can be generally assumed with justice that the members had been informed of these purposes and activities." Thus the Tribunal itself has defined with unequivocal clarity the objective and subjective characteristic elements in the case which must be fulfilled if the International Military Tribunal is to characterize the SA as a criminal organization.

For the purpose of describing an organization or an individual, only typical characteristics may be used. Characteristics which we find in other countries also, without their hitherto having given occasion to designate the persons displaying these characteristics as criminal, cannot, in all fairness, be used in the proceedings before the International Military Tribunal in order to prove the criminal character of the accused organizations. Thus it does not appear just to the Defense if the Prosecution attempts to deduce the criminal character of the accused organizations, for instance, by stating that the Party and their organizations effectively controlled the machinery of the State, quite apart from the fact that the SA never had any power to do this.

Even if we assume the use of such methods by the SA, they are not unique in the world, and do not belong to the past. But as long as these methods are not regarded and treated as criminal all over the world, they should not justly be used as a typical manifestation of the criminal character of the indicted National Socialist organizations. The allegation of the Prosecution to this effect must, therefore, be dismissed with this statement on the establishment of proof of a criminal quality.

Just as little can one, to prove the criminal character of the SA, use occurrences which took place entirely outside of the organization, occurrences about which "in general it can no longer be justly assumed that members were informed."

Accordingly, the Defense of the SA has to prove that, (1) there did not exist at any time a common and joint plan of the SA members to commit crimes of the nature indicated in Article 6 of the Charter; (2) that neither at the time of their joining, nor during any other subsequent period of time, were the majority of SA members trained to carry out the Party program, or the

special objectives of the SA, by the use of illegal means, particularly, by the employment of terrorism and violence; (3) that if illegal actions have been established, the result of the examination and interrogation of many thousands of members showed that these happenings lack the characteristics of a plan involving the majority of the members, and that therefore—since they were entirely outside of any common or joint plan—they can be charged only to certain individuals, or very narrowly defined categories or groups of persons within the SA.

It is not true that behind those horrible and shameful events there existed, from the very beginning, a general and common plan by a mass organization to commit actions of this type, or that these actions really "were so completely open, or had otherwise so generally come to the knowledge of the members, that the members as a whole can rightly be charged with knowledge in a criminal respect."

As for the crimes against peace presented by the Prosecution, it must be made clear first of all that preparations for a war of aggression, if they are to lead to the desired goal, must under all circumstances remain secret. Even if it were true that the Reich Cabinet or the General Staff had prepared a war of aggression, there is an almost irrefutable assumption that they not only did not inform the indifferent majority of millions of SA members, but on the contrary took particular pains to have these preparations remain secret. But if such preparation was unknown, then the millions comprising the majority could at no time have become aware that the defensive war begun by the Reich leadership was in reality, as the Prosecution contends, a war of aggression, participation in which might perhaps be considered as a crime against the peace.

Crimes against the customs and rules of warfare are by nature individual actions of highly restricted groups of persons or formations, which are likewise kept secret by the higher leadership in order to prevent the international legal principle of retaliation from being applied. Even if it were possible to see a punishable participation in the mere approval of such violations of the recognized rules and laws of warfare, the Prosecution would still be confronted by the hitherto unsolved, and seemingly insoluble, problem of first proving that at least the overwhelming majority of SA members knew about such a planned commission of crimes against the customs and rules of warfare. Quite aside from these assumptions, which are contrary to substantial contentions of the SA, however, evidence can be introduced by the Defense, after questioning many thousands of SA members, that if violations of the law occurred they turned out to be, according to a legally necessary analysis as to time and

place, on the whole only mutually independent actions by individual persons or highly restricted groups of persons lacking any common goal; therefore there is no justification for treating them as "typical manifestations" of a uniform plan which might justify characterizing the SA as criminal.

It will not be possible, in the face of this evidence of the Defense, to advance the objection that the conclusions drawn by the latter cannot be accepted without reservation because the investigation extended to only a part of the millions of members comprised in the indictment against the organizations and that, therefore, a generalization of the result such as expressed in the conclusions drawn by the Defense does not appear justified.

It is not the fault of the Defense, Your Honors, that part of the members could not be heard, for in co-operation with the General Secretary's Office, the Defense did everything possible to have the witnesses brought from the Russian Zone with whom, up to the time when they were named as witnesses, they were still able to correspond. I furthermore declare that the members of the SA who live in the Russian Zone could not be given the hearing to which they were entitled, since, according to my information, most of them were kept in ignorance of the charge against the organizations. This is one of the most serious objections against the Trial which will always remain in history.

THE PRESIDENT: Dr. Böhm, that is a most improper observation of you to have made. There is no evidence that members of the SA have been kept in ignorance. On the contrary, the same notices have been posted in the camps in the Russian Zone as in other zones and, moreover, the Defense Counsel Dr. Servatius, who has been in the Russian Zone, has made no complaint to the Tribunal. We consider that as an observation which no counsel ought to have made.

HERR BÖHM: Yes, Mr. President, but it was precisely from the mouth of my colleague, Dr. Servatius, that I received this information.

THE PRESIDENT: Dr. Böhm, Dr. Servatius said no such thing to this Tribunal. On the contrary, he said that he had been properly treated in the Russian Zone.

DR. ROBERT SERVATIUS (Counsel for the Leadership Corps of the Nazi Party): Mr. President, I have been in the Russian Zone and in accordance with my wishes was able to visit two camps. In my final plea I have pointed out and declared that, according to the information placed at my disposal, the announcement was made in all camps. I myself had only had time to visit two camps, which I picked out personally. Indeed, I have also stated that here in court.

THE PRESIDENT: Thank you.

HERR BÖHM: In that case, I must have completely misunderstood the information which was given me, Mr. President.

Moreover, I should like to stress the limitations imposed on the Defense by the fact that, in spite of all our efforts and the most exact indication of the addresses, some of the witnesses who live in other zones did not show up. In particular, the witnesses Fust, Lucke, Alvensleben, and Wallenhöfer are missing. Because of the absence of these witnesses, we also lack the statistics about the SA and the relief fund that are necessary to form a true judgment of the events before the year 1933, which would have shown the terrorism employed against the SA. Moreover, part of the documents which had been requested and were approved by the Court did not reach the hands of the Defense.

Accordingly, the International Military Tribunal when passing judgment can only proceed from the premise that illegal acts were committed only by a limited number of persons, or numerically restricted groups of persons, whose activities can no more place the stamp of "criminality" on the organizations as a whole than a number of crimes, such as are found in any nation, could characterize that nation as a criminal nation.

To sum up, from the point of view of the Defense, one may state that the charge raised against the SA organization as a whole, which in its effects includes even the war dead, lacks those basic, theoretical, and material prerequisites the neglect of which, implicit in any unfavorable decision of the Court, cannot be reconciled with "healthy popular sentiment" any more than with the aspirations of the United Nations, born of such painful experience, to restore confidence in fundamental human rights, and to create conditions under which justice and respect for international law can be maintained.

The Prosecution state that the declaration of criminality is necessary in order to create the necessary conditions for convicting a large part of the direct perpetrators who cannot be convicted individually, as well as to punish their moral accomplices. According to the charges of the Prosecution, the Supreme SA Leadership—to cite the main charges—must have done or tolerated the following: (a) prepared or planned, that is, ordered, a war of aggression; (b) tolerated or carried out atrocities or other crimes in the concentration camps.

The presentation of evidence has clearly established that no orders were given to that effect by the Supreme SA Leadership, and that no misdeeds were tolerated. Moreover, the assertion that in most cases the real perpetrators are not to be found is not true.

If a war of aggression really was planned, only a few people, but never 4,000,000, could have been concerned in this planning. The perpetrators of the Jewish persecutions, which were limited as to place and time, are known or can be ascertained. Since the localities of the Jewish persecutions in November 1938 are known and the perpetrators can be convicted by witnesses or else by documents, as is proven by the present trials for the Jewish pogroms in 1938, for instance in Weissenburg and Hof, it is unnecessary to create an assumption through a declaration of criminality, especially since these deeds were repudiated by the majority of SA members. In the same way, the localities where concentrations camps were situated and the names of those responsible for the deeds committed there are well known. This is borne out by the numerous trials against concentration camp commanders and guard units. Are millions of SA members, 70 percent of whom were at the front during the second World War when these terrible happenings took place in the concentration camps, to be made responsible for them, when even former ministers claim that they had no knowledge of these events? Let the actual perpetrators be seized! A collective arrest, however, of 4,000,000 men, is unprecedented and unique in the history of penal law. It is inhuman and based upon an extension of the concept of "accomplice" which disregards all the legal security and the principles of all criminal codes.

The basic idea in the conspiracy is that it is punishable to join an organized group of persons which, at the moment of joining, is already prohibited. The persons joining, therefore, must be aware upon their admission that they are committing an unlawful action.

A retroactive declaration of criminality, the aim of which is to make proceedings possible against individual members retroactively, violates the principle *nulla poena sine lege.* The International Control Council expressly established this principle in its first law on the administration of justice in Germany. The International Tribunal cannot disregard a general legal principle of the interallied legislative organ which is authoritative for Germany.

In case of a declaration of criminality, still another principle would be violated. By their recognition of the German State and thus of its leadership, by the constant participation of representatives at noteworthy occasions, such as at SA maneuvers, and also by different agreements, the Allied powers gave evidence that they recognized the German leadership and its organizations as legal. The document which I quoted, SA-229, "The Political Ordinances of the Interallied Rhineland Commission and their Application in the Years 1920-1924," established that on 21 March 1925 the Rhineland Commission revoked the ban on the German Liberty Party

(Freiheitspartei) and the National Socialist Party. An affidavit from the Palatinate (Affidavit Number General SA-42), which was submitted by the Defense, shows that all social functions organized by the NSDAP and the SA were approved by the French occupation authorities before the year 1930. The foreign offices of the Allied nations must have had better insight into the over-all political situation than millions of ordinary SA men, who, considering the political situation, could not have been aware that they were committing an illegal act by entering or remaining in the SA.

The present prosecution of an organization which was recognized at that time contradicts the universally accepted legal principle *nemo in factum proprium venire potest;* that is, "Nobody may belie his previous conduct." This principle of Roman law, which is used as a rule of interpretation in the League of Nations, can command universal validity.

Concerning the SA, the Prosecution employ a number of oversimplifications regarding purpose, place, time, and assisting groups of persons, which alone enable the Prosecution to provide a basis for the declaration of criminality. In other words: the Prosecution act as if throughout the entire time there had existed a uniform personality, "the SA," with a uniform leadership, responsibility, common purpose, intention, membership, and uniform conduct. Without such generalizations the Prosecution would never accomplish their aim; for instance, in the question of aggressive warfare and the persecution of the Jews. By doing so they ignore the real problem of mass liability, which can be solved justly only by a great number of individual statements, and which requires the investigation of the agreement of action and aim in a majority of the members. In contrast to such an opinion we cannot stress too strongly the actual schism among the SA concerning the objectives of the leadership circles, as well as the members generally, and the limitation in time and space of the deeds which stamp everything which happened within an organization of four millions merely as occurrences, restricted as to time, locality, and persons, which took place during a period lasting over 20 years. It would have been necessary for the Prosecution to prove that the majority of the members of the SA had the intention, the inner will, and the knowledge of the criminal purpose and its component elements, besides being generally aware of its unlawfulness. Since this is impossible, they put forward the theory that the facts of the case and the objectives were so obvious that anyone could have recognized them. If all this was so clear to millions of ordinary people, why did the Allies maintain relations and make agreements until 1939 with this nation which was maintained by bands of criminals? The theory that in view of this state of affairs the members could

have known, and ought to have known, the criminal aims and deeds, involves the abandonment of any real examination of the knowledge of the majority of the members.

Practically speaking, the Prosecution content themselves with the fiction of premeditation. In doing so they tend to overlook innumerable speeches which were made in order to deceive the German people; they forget (1) that quotations from foreign sources concerning the value of the National Socialist State were reprinted in the press; (2) that in the course of these 12 years the actual events were presented to the German people and to the majority of SA members in a veiled or cleverly justified form.

That, furthermore, premeditation can only be considered in conjunction with concrete facts, to which I propose to refer later, is so obvious that it is unnecessary for me to say anything further. I merely want to point out that innumerable affidavits contained in the collective summarization which I have submitted prove ignorance of, and nonparticipation in, the following crimes: persecution of the Jews, the planning of a war of aggression, and the commission of atrocities of all kinds.

But above all I should also like to point out that there is no connection between the main defendants and their actions and the members of the SA. The SA can—if at all—be rendered responsible only for actions committed by persons in their capacity as members or leaders of the SA, but not for those committed, for instance, in their capacity as Reich Ministers, Reichsleiter, Gauleiter, regional commissioners, or in other functions. Apart from a passing appearance in the SA before 9 November 1923, Göring played no part at all in this organization. Later on, his rank was only that of an honorary leader. The same applies to the Defendant Frank; the SA cannot be rendered responsible for his alleged deeds as Governor General of Poland. He was not the leader of the SA formations which were composed of the German nationals and racial Germans employed in Poland. Rosenberg, Bormann, Schirach, Streicher, Hess, and Sauckel had no relationship with the SA. As the witness Jüttner emphasized in his evidence, Bormann was one of the bitterest opponents of the SA. Streicher was the man who removed SA-Obergruppenführer Stegmann.

The propaganda, to which the Prosecution has also fallen victim, shows a National Socialist state in which the Party, the State, and the Armed Forces on the one hand, and the Party and its organizations on the other, represent one uniform whole. In reality, there existed profound divergencies. It was just these divergencies that gave Adolf Hitler an unheard-of power over people and an unheard-of independence of which he only availed himself with a few confidential friends, as is now becoming evident for the first time.

In this connection I need only recall the divergent views held within the Party, as well as among the leading men such as Göring, Goebbels, Himmler, Lutze on the Church question and the Jewish problem. For the average man and to the average member of an organization it was no simple thing to perceive and find a clear line leading through this diversity of tendencies. However, none of the problems, especially those of war and peace, were of such a kind with respect to their solution that they could be the object of a conspiracy.

Jüttner's testimony, as well as the affidavits of Hörauf and Freund, point to the fact that the Supreme Leadership of the SA maintained close relations with British and French circles for the purpose of forming a Western Pact, up to the moment when it was eliminated from politics. I have proved that the SA received financial assistance from abroad in connection with these negotiations; furthermore, I have shown that in 1932 the Leadership of the SA was actually engaged in negotiations with German Government circles for a coalition against Hitler. I have proved that from a political point of view there existed three deliberate trends as regards foreign policy, just as I also indicated that the eastern and the western trends were mutually opposed. In this connection, may I refer to the following sentence spoken by the British Prosecution according to the transcript of 31 July 1946. I quote:

> "If the German side could show that the British Government had given economic assistance to the SA in order to bring it into power, subject to the condition that Röhm were placed in control, the Defense would, indeed, have considerably advanced its own case, because it is obvious that the Government of 1946 could not join in the trial against the SA if it had supported the SA in 1934."

The affidavit submitted by Hörauf, however, shows clearly and unequivocally that the negotiations carried on between Anglo-French political quarters and the SA Leadership in those days were, indeed, perfectly obvious. I have furthermore shown that the contacts with British and French quarters represent a clue to the events of 1934.

The Indictment charges that the SA was at all times a willing tool in the hands of the conspirators. The best proof to the contrary is offered by the events of 30 June 1934. In connection with these events, the erroneous opinion is heard again and again that it was possible in those days to crush an SA Putsch or a Putsch of a small clique intent upon seizing power. There can be nothing more mistaken than this train of thought. For the fact is that the SA led a life of its own within the Party, as shown by Freund's affidavit (General SA-83). It is clear beyond a shadow of a doubt

that in the time of Chief of Staff Röhm the majority of the SA had little or no contact with the Party. The situation in 1934 was such that every free expression of opinion, above all in the Party itself, had already been suppressed, and that regimentation had become almighty. Everything was tending toward political co-ordination, coercion was triumphant and completely dominated public life. The Reich Cabinet had already been practically eliminated at that time. The Reichstag was nothing but a dummy and had no positive value whatsoever.

There was a time when the SA had enthusiastically advocated a "Führer State," but it now realized that Hitler, as Chief of Staff Röhm expressed it, surrounded himself with demagogues and nonpoliticians and, instead of becoming a national leader, had become a dictator. The Supreme Leadership of the SA viewed this development with growing distrust because it involved the great danger that the nation, which had given unlimited full powers to the Führer, might be completely eliminated from the future development of the Reich and its policy. This danger and the conditions created by coercion brought about an untenable situation. Thus there arose, at first strictly concealed, the opposition of the Supreme SA Leadership led by Chief of Staff Röhm.

Their intention was to remove the existing system and to replace it with a genuinely popular government having the active cooperation of the people themselves. All the preparations, which have also been mentioned by the witness Jüttner in the meeting of the Commission, were made along these lines. It was shown that Röhm intended to gather information at the Kulmbach convention about the situation of the workers which had come about from the dissolution of the trade unions by Ley. Here it should be expressly emphasized that Röhm authorized the participation of members of the SA in the liquidation of the unions only because the organizations of the Left had weapons stored in the trade union headquarters, and it was to be expected at any moment that civil war might spread from these trade union headquarters to the nation as a whole.

Röhm intended to dissolve the SS. This is proved by the affidavit of former SA Brigadeführer Freund. Röhm's endeavor to achieve the consolidation of the Central European area by way of negotiations with the Western Powers is connected with this new State which was to be created. It has been shown that these negotiations had been under way for a number of years (Jüttner's testimony, Freund's affidavit).

One of the last negotiators was SA-Obergruppenführer Von Detten, as revealed in the affidavit of Brigadeführer Freund. All the documents dealing with the military-political aspects of

the SA submitted by the Prosecution are related to this unsuccessful attempt made by Chief of Staff Röhm. As the witness Jüttner clearly testified, Röhm believed in the creation of a popular militia according to the Swiss model, and based upon the framework of the SA as part of the great plan for the creation of a Western Pact. It is regrettable that it was impossible to produce some witnesses who might have given further information on this matter to the Tribunal. Röhm's attempt failed. In addition, differences with the Reichswehr also contributed to his downfall. The 30th of June 1934 was the result of this development. The first attempt to eliminate Hitler's dictatorship definitely failed. More than 200 SA leaders were shot. Since that time Heinrich Himmler reigned behind the scenes in Germany.

The true background of 30 June 1934 was not to become known in Germany and abroad, since this would have seriously shaken Hitler's prestige and that of his government. That was the reason why the huge smoke-screening machinery of the press was wound up and set in motion to divert the attention of the masses, and that was also why such a comparatively large number of persons were shot, who could no longer talk—that is, they were not to talk. Among Party members it was forbidden to discuss the very day.

It is an interesting parallel that an SA leader was likewise involved on 20 July 1944, SA-Obergruppenführer Count Helldorf. He was hanged.

After 30 June 1934 the SA sank into complete insignificance. After 30 June 1934 the SA was regarded as a disagreeable appendage. The SA was considered politically unreliable. Therefore, as was repeatedly established by the testimony of witnesses before the Commission, it was not given any further duties. The SA's destiny from that day on was nothing but the search for a task. Officially the SA was supposed to handle military-political education and athletics. In reality, however, the Party entrusted the SA with totally inferior tasks. The attitude of the Party towards the SA became particularly evident in 1939, too. As the witness Jüttner has clearly stated, it was Bormann who sabotaged the decree of 30 January 1939, and who did not permit the premilitary training duties of the SA to be carried out. The witness Bock has informed us of the preparation and beginning of the premilitary and postmilitary training program. But he also stated that this task of the SA was terminated. Only the events of the war brought forth the so-called SA-Wehrmannschaften.

Thus the SA was never able, as the Prosecution say, to "participate feverishly in the preparations for war." It is absolutely impossible that, as the Prosecution claim, 25,000 officers were trained in SA schools. This claim was unimpeachably refuted by the

testimony of the witnesses Jüttner and Bock. How unreliable the SA became in Bormann's eyes is shown by the fact that the Volkssturm was not built up from the SA. We learn from one of the affidavits submitted that the reason for this was the unreliability of the SA (Number General SA-67). The elimination of the SA is demonstrated by purely external evidence, if we recall that Röhm was Chief of Staff, Reich Leader, and Reich Minister; Lutze, Chief of Staff and Reich Leader; and Schepmann, only Chief of Staff.

During the meetings of the Commission there was much discussion about the "Wehrsport" work of the SA. Nothing has been more completely misunderstood than this. The SA is described by the Prosecution as a semimilitary organization of volunteers, although the duties of the Wehrmacht and the SA were clearly separate from each other. Misunderstandings resulted primarily from the fact that there is no correct English translation of the word "Wehr." Nevertheless, this concept ought to be clarified, for the Prosecution itself submitted Document 2471-PS. In this document it says:

> "The SA, the exponent of the desire for military preparedness (Wehrwille). The SA claims to be the exponent of the desire for military preparedness (Wehrwille) and of the defensive force (Wehrkraft) of the German people.
>
> "The emphasis on these qualities may have led to misunderstandings abroad, partly because foreign languages are unable to translate correctly the terms 'Wehrwille' and 'Wehrkraft' but substitute for them the terms 'Kriegswille' or 'Kriegskraft,' while correctly 'Verteidigungswille' or 'Verteidigungskraft' (force) should be used. 'Sich wehren' is a linguistic derivation from 'Abwehr' (defense), therefore, 'der sich wehrende' (the one who is defending himself) in every case is the one who is attacked; and, therefore, the imputations of aggressive military intentions are plainly absurd."

Ultimately, the Wehrmacht is the concentrated trained and directed force of all men able to defend themselves (wehrfähig). At no time did the SA have anything to do with that technical military training which is given in the Wehrmacht. Therefore, the SA athletic badge has been misjudged by the Prosecution. It is admitted that it was the purpose in awarding the SA athletic badge to train citizens fit for military service. Indeed it is also stated in the first document of 15 February 1935:

"The new state demands a tough and hardy breed."

In the regulation concerning the implementation of the document of 18 March 1937 we find the following:

> "The training of the body in competitive sports is not a purpose in itself, but a means to strengthen German men

spiritually and physically, to increase their efficiency, and to make them ready and able to serve for the maintenance of the nation even up to an advanced age."

It is also admitted that parallels exist between the work of the Wehrmacht and the SA. The idea was that the SA would train the German man to be a National Socialist and a political fighter, while the Wehrmacht would give him the character and technical training of the man-at-arms; it would train him for the defense of the country. However, it would be going too far to call the SA a military unit. At no time did the SA possess any military value. The SA was nothing but an association whose members counted millions and marched in the same step. From time to time field games were played, but it was forbidden to base them on military situations. The SA man listened to an occasional lecture and practiced with small-bore rifles once every fortnight, just as is done in rifle clubs. Therefore, the SA is far from being a military unit, even if every company (Sturm) should have had a maximum of five small-bore rifles which, however, was not universally true. The SA never possessed heavy arms, much less practiced with them.

The relationship of the SA to the Wehrmacht was accordingly strained. At no time was it recognized by the Wehrmacht. Service rank in the SA—no matter how high it may have been—had not the slightest influence on rank in the Wehrmacht. On the contrary, it often had the effect of delaying promotion. Special training certificates of the SA, such as riding certificates, medical certificates, radio certificates, received no recognition in the Wehrmacht. It is actually comic to read in affidavits that SA men from engineer units were used in signal corps regiments and SA men from signal corps units in engineer units of the Army. It may be stated in detail:

(1) The SA uniform was the most unsuitable uniform imaginable for military purposes. In this connection I refer to the testimony of the witness Bock.

(2) Aside from the small-bore rifles already mentioned, only dagger and pistol were permitted. Moreover, the dagger was not introduced until after the year 1933. Only the Sturmführer had pistols, and only part of the Sturmführers at that, namely, only those carried pistols who fulfilled the customary conditions in Germany for the firearms permit.

(3) There were no means of transportation in the SA.

(4) The SA had no depots for heavy weapons and no arsenals for small arms. Therefore, no training in them could take place.

(5) The SA units did not correspond to the military units. Their composition and organization were not planned from the point of view of possible military service. With the exception of the "Feldherrnhalle" Standarte, the SA were not quartered in permanent

barracks. The military jurisdiction (draft board and recruiting district headquarters) did not correspond with the SA classification. A "Standarte" in the country, for instance, was territorially split up into many small "Stürme" and "Trupps," which were not fixed in number and not comparable with a military regiment.

(6) Commands could not be passed on quickly.

(7) No exercises in military formation took place.

(8) The SA special units did not have any military tasks. They had no military equipment, just as they had no military value and no military mission. The SA riding companies served for riding and driving sports. The engineer companies were for emergency service in case of natural disasters. The signal companies had the task of reading signals with primitive, old-fashioned methods, without the use of radio, which was forbidden, as can be seen from an affidavit. The medical companies of the SA served in giving first aid in the field of public health service. Their training was in keeping with the Geneva Convention (Testimony of Bock, Affidavit General SA-90).

(9) The so-called "Feldherrnhalle" army units were not subordinate to the Supreme SA Leadership, as evidenced by the affidavit of the former Major General Pape (General SA-18).

(10) The SA leaders were not chosen according to military consideration or ability (Bock's testimony).

The examination of the Defendant Von Schirach showed that the SA was incapable of providing military training. During the war the draft of an agreement was submitted to the SA for over a year, according to which the SA, like the SS and the Police, was to furnish persons to the Hitler Youth for the purpose of training young men in military training camps. Documentary evidence in Exhibit USA-867 establishes that the SA Leadership did not grant this request. As reason for this the Defendant Von Schirach states that the SA was not capable of doing this.

The concepts of "Wehrmannschaften" and "SA-Wehrmannschaften" were confused by the Prosecution. In the occupied territories the Wehrmannschaften constituted a consolidation of legal civilian offices which were generally only concerned with administration, but if the rear areas should become endangered they were to be organized for their defense. Furthermore, the term "Wehrmannschaften" in the occupied territories also included local residents such as Lithuanians, Latvians, Estonians, or White Ruthenians, who likewise had to defend themselves against partisans. However, the term SA-Wehrmannschaften signifies formations from the Reich itself which primarily were supposed to organize the SA men dismissed from military service in the Wehrmacht for the purpose of preserving their military efficiency. They were to be a kind of substitute for the former veterans' organizations.

The British Prosecution has been good enough to submit among their Prosecution documents articles from the *SA-Mann* which reveal what is really to be understood by military training. Probably for purposes of comparison, to determine whether the SA gave military training, it quotes these articles which deal with the training of British, French, Russian, and Italian youth, as well as that of British Dominion youth and French youth. They make it quite clear that the Supreme SA Leadership did not give any such training.

The connecting link between the military training of the SA and aggressive warfare was supposed to be a series of articles on the so-called "Lebensraum" question, which, indeed, the British Prosecution has meanwhile withdrawn, since this series of articles does not indicate what it wished to maintain. The articles quoted by the British Prosecution on the colonial problem mention only a peaceful recovery of the colonies. As the proceedings before the Commission have shown, these articles showed no signs of any war-mongering spirit. Therefore, the leap which the Prosecution makes in order to prove the promotion of a war of aggression by the SA is a leap into empty space. On the contrary, I have shown that the Supreme SA Leadership did everything possible to contribute to understanding among nations. This was clearly shown by the statements of the witness Oberlindober. I have also shown that only individual ideological political training was given at the Führer schools of the SA, no military training. We see from affidavits that songs which might perhaps have indicated an aggressive tendency were forbidden by the Supreme SA Leadership. I have shown that individual SA men who tried to preach a war of revenge were expelled from the SA.

Finally, I have shown that preparations were made on the part of the SA Leadership for the Reich Party Rally of 1939, which were contrary to any possible plans for war. We have also made this clear through the testimony of the witness Dr. Geyer, and through the affidavits of Koch and Zellenhöfer. Finally, in the proceedings before the Commission there came to our attention an agreement between the SA and the Wehrmacht, which was intended to constitute a counterbalance against any possible military aggressive tendencies on the part of Hitler, Himmler, and Goebbels (Affidavit Number General SA-1).

The Prosecution's view that the SA was founded in order to overthrow political opponents with terroristic methods and thus make the way clear for an aggressive war is likewise completely misleading. Anyone who knows political conditions in Germany and views them unclouded by propaganda will wonder how people can arrive at such an opinion. The arms depots of the KPD (Communist

Party of Germany), which have been officially proved, and the unequivocal attitude of the KPD speak an unambiguous language (Document Number SA-287). The extent of the political street encounters of the KPD and the other Leftist radical elements can be seen from the testimony of the witness Bock before the Commission, who testified that the relief fund of the NSDAP had to be founded in order to care for members of the NSDAP who fell victim to the Leftist radical terror. It might be pointed out that it was the KPD that considered civil war, general strike, and a political mass strike as necessary political fighting methods, as appeared from the decision of the State Court for the Protection of the German Republic, which I submitted to the Tribunal in my document book (Number SA-285). That this political terrorism was carried on as a part of world revolution is also shown by a decision rendered by the State Court for the Protection of the German Republic. This was also pointed out to us by the witness Jüttner when he referred to the idea of a defensive Western Pact directed against endeavors to bring about a world revolution (Document Number SA-286), in pursuance of which, by their own admission, the Communist International began revolutions, among other places, in Finland, Austria, Hungary, Bulgaria, and Syria. It can be said without any exaggeration that without the Marxist theory of class struggle, and without the events which led up to it, the causes would doubtless not have arisen which required the protection of a spiritual movement by means of the SA. The witness Gisevius also adopts this view when he declares:

> "The SA has its origin in that postwar period when revolution was either still in progress in Germany, or was just beginning again. One might say that it was one of the last outcroppings of the Spartakus upheavals in 1918. Red pressure produced Brown counterpressure, and from that time on the latter's external manifestation has been called the SA."

The Prosecution, for their part, have submitted unequivocal documents of the *SA-Mann*, which was certainly not an official organ of the Supreme SA Leadership, but which in this case offers conclusive proof as to which side was responsible for the terrorism, and that was undoubtedly the Communist Party. I do not propose to quote in detail the articles which contain this proof. I merely want to refer to Prosecution Document 3050-PS, in which, by the way, articles from the *SA-Mann* were reproduced by the Prosecution in a distorted way and torn from their context (Compare the testimony of Klähn and Bock before the Commission).

COL. POKROVSKY: My Lord, counsel for the defense is trying to attribute to the Prosecution material submitted as evidence which the Prosecution have never submitted. I very definitely object to

such methods on the part of Dr. Böhm, since such methods seem quite obviously intended to introduce Fascist slander and libellous Fascist inventions before this Tribunal. I am asking the Tribunal to deny the reading of the subsequent paragraph of counsel's speech, which in the Russian translation appears on Page 29. It is the first paragraph. I would like to draw the attention of the Tribunal, My Lord, to the fact that we have there a very clear alteration of the real state of affairs. It is quite true that Document 3050-PS was submitted by the Prosecution, but it consisted of a bundle of unofficial newspapers *Der SA-Mann* for a number of years. In terms of previous decisions of the Tribunal, if counsel wanted to refer to any part of that document, he should have followed the example of the other attorneys by putting in the particular part of the document which he wanted to quote in his speech. This he did not do. Thus, the allegation that the Prosecution submitted material which the Prosecution did not intend to put in is incorrect, and in my opinion counsel has no reason at all to refer to what he is referring to in the first paragraph on Page 29 of his speech.

THE PRESIDENT: I do not quite understand your objection. I have got a translation before me which says: "The Prosecution also presented documents derived from the *Associated Press*, as has been proved at the session of the Commission."

I understand that was submitted by the Prosecution. Is that right?

COL. POKROVSKY: My Lord, Document 3050-PS, to my knowledge, consists of a collection of newspapers *Der SA-Mann* for the years 1934 to 1939. Some parts of the text contained in these newspapers have, in fact, been quoted by the Prosecution. But my opinion is that if counsel wanted to use part of the material which was not quoted, although it did appear in the same document, 3050-PS, then he ought to have done that at the time he was submitting his evidence, or else he ought not to have done it at all. That is the way we interpret this question, My Lord. It concerns the quotations from the newspaper *Der SA-Mann*.

THE PRESIDENT: But have not the Tribunal laid it down, at the outset, that the defendants could refer to any other part of the documents which was contained in the document of which part was put in by the Prosecution? Is not that all he does, referring to some other pages of the documents which have been put in by the Prosecution? At the outset the Tribunal laid down a rule to cover this very situation. It is always the same.

COL. POKROVSKY: The Prosecution do remember that decision of the Tribunal, My Lord, but we interpreted it in the way I have described. It seemed to us, and our point of view was strengthened by all the previous procedure followed by the Defense, that counsel have to put in those parts of a document which have already been

submitted, but not quoted, by the Prosecution and which counsel would like to use as evidence. Dr. Böhm has not done so.

HERR BÖHM: May I define my attitude, Mr. President?

THE PRESIDENT: No.

Colonel Pokrovsky, he does not expressly say it was used by the Prosecution. He expressly states to what he is referring. I do not consider it improper, referring to any other part of the document in that way.

COL. POKROVSKY: It seems to me, My Lord, that such utilization of a document on the part of the Defense is not correct, and this for the reasons I have already stated to the Tribunal. I would like to repeat once more, it seems to me that he ought to have produced these parts of Document Number 3050-PS at the time he was submitting his evidence.

THE PRESIDENT: The part of the document to which he is referring is a part which was not referred to by the Prosecution. So what you desire has been done. Very well.

COL. POKROVSKY: That is it, My Lord. You are quite right. Thank you.

THE PRESIDENT: Go on, Dr. Böhm.

HERR BÖHM: Mr. President, in my plea I merely supported my argument with the document which was not submitted by me, but by the Prosecution, 3050-PS. To pick out the individual articles here would amount to the work of at least a whole day, as was also the case in the Commission hearings. It is true that there are many individual articles included in Document 3050-PS. But as far as I am concerned, there was no occasion whatsoever for me to give their numbers because I did not present them. And therefore I do not think I have done anything wrong here.

May I continue?

THE PRESIDENT: Yes, go on.

HERR BÖHM: The Prosecution have also introduced documents which originated with the *Associated Press,* as was proved at the meeting of the Commission, in which the political struggle is viewed in connection with world-revolutionary tendencies. I only recall the article entitled "The Red Danger in the East," and the cartoon with the caption, "Stalin wants world revolution, Budjenny has already smelled the roast," which was likewise introduced by the Prosecution. Finally, the Defense would like to draw attention to the street fighting order issued by the KPD.

Moreover, I refer to the general order issued by the Supreme SA Leadership, which states that weapons of any kind are forbidden in the SA, and that violations of this regulation will be

punished with expulsion from the SA. Furthermore, I might refer to the testimony of the witness Dr. Kurt Wolf, who stated that this prohibition against carrying arms resulted in a disproportionately high number of victims among the SA men. The witness confirmed that the number of dead on the side of the National Socialist Party was higher than on the side of the KPD. He also gave the explanation that the members of the SA, unlike the radical elements of the Left, were always searched for arms by their responsible leader. I also refer to the affidavits by Freund, Zöberlein, and Hahn. They represent the political situation as it really was, beyond any doubt. The testimony repeatedly revealed that before 1933 we stood on the verge of civil war. The excesses which actually occurred in 1933 are to be explained by this civil war psychosis. This is also shown by the testimony of former State Secretary Grauert. Herr Gisevius says the following about this period, as I have explained in Document SA-301:

"Looking back on these events, one may say without hesitation that this first phase of the revolution claimed comparatively few victims."

If we look at Document SA-302, he also adds that

"by and large, it was only a very small clique which rendered itself guilty of excesses."

In his testimony before the Tribunal, he repeatedly makes an exception in the case of the majority of the SA. It was also perfectly clear from the testimony that the Supreme SA Leadership intervened whenever excesses were brought to their knowledge. That this was actually the case is shown by the Vogel affair, and above all, by the testimony of former Police Chief Habenicht about the camp near Wuppertal. In close co-operation between Grauert and the Supreme SA Leadership elements committing excesses were eliminated. In his affidavit on the SA, Herr Diels, who serves as an incriminating witness for the Prosecution, limits the circle involved in Berlin to the signals sections which had grown out of Ernst's Group Staff. On the other hand, we also know from the summarized collection of affidavits that the notorius SA leader who had the nickname "Schweinebacke" (hog jowl) was expelled from the SA for blackmailing a Jew, and sentenced to a long term of imprisonment. The testimony of Burgstaller and Jüttner make it clear that the SA did not adopt an extremist attitude in the racial question; because otherwise it would have been impossible for baptized Jews to be admitted to the SA in Berlin and for baptisms of Jews to take place in the presence of uniformed SA men. The testimony given by Diels shows that the SA in Berlin was not anti-Semitic. He expressly emphasizes that anti-Semitic propaganda had been Dr. Goebbels' business. We have also the testimony of

Dr. Menge, who stated that Jewish businesses in Hanover were protected by SA detachments, in return for which the Jewish shopkeepers supplied the members of the SA with purchase coupons (Affidavit Number General SA-1). Furthermore, we see from the collective affidavits that houses and businesses of Jewish citizens in other cities too were protected by SA members from looting. From the testimony of the witness Jüttner we see that the attitude adopted by the Supreme SA Leadership in this matter coincided with that of the well-known Jewish professor Karo, who adopts a hostile attitude toward Eastern Jewry. These manifestations of hostility to Eastern Jewry are the after effects of the first World War, when innumerable Jews came to Germany from Galicia.

The events on the occasion of 9 November 1938 are among the most seriously incriminating points charged against the SA. The alleged report of the leader of the Kurpfalz Brigade plays an important part in this connection. It appears from the entire circumstances surrounding this alleged report on action taken (1721-PS) that it can only be an unskilful forgery. In proof of this I named the witnesses Lucke and Fust, who in spite of efforts by the Secretary General extending over a period of months could not be transferred to Nürnberg, although the Defense had indicated the camps where they are interned.

THE PRESIDENT: Dr. Böhm, that is an improper observation, or suggestion, for you to make. Every effort has been made by the Secretary General to obtain all the witnesses whose names have been given, and there is no evidence that those witnesses were in the camps that you are referring to.

Now you may go on.

HERR BÖHM: The following may be said in detail—I am here commenting on Document 1721-PS:

(1) In the correspondence of the SA it has never happened that in the case of report on action taken the order given was repeated in substance;

(2) The order of the leader of the Kurpfalz Group reads, according to the Prosecution, that is, this document: "By order of the Gruppenführer." If an order had been given, it would have read: "It is ordered," or "The Group orders"; in no case, however, would it say, "By order of the Gruppenführer."

(3) The expression "Jewish Synagogues" does not exist in German. This expression "Jewish Synagogues" is also foreign to official party communications. The term "Jewish" is already implied in the word "Synagogue." The term "Aryan" in this connection is likewise out of place. If the order were authentic, then in contra-distinction to "Jews" at this point it would have spoken of "German compatriots."

(4) "Riots and looting are to be avoided," it continues. Conditions in Germany in 1938 were such that no one, and certainly no leader of a Group or a Brigade, would have thought of such disturbances, much less have used these words in this connection in an order.

(5) "Report on action taken to be made by 8:30 o'clock to the Brigadeführer or local office," it says further in this alleged order.

In no case does the Group order a report on action taken to be made to the Brigade which is receiving the order, but only to the Group. Logically, it should have said "to the Gruppenführer."

(6) It is equally improbable that the leader of the Brigade did not pass on the order, that is, give orders to the leaders of the Standarten on his own initiative, but only "informed the Standartenführer immediately and gave them exact information." Fanciful reports such as this on action taken never existed in the SA.

(7) It says in the report, "... and immediately began to carry out orders." This formula is also completely devoid of probability. The leader of the Brigade reports in the preceding sentence that he immediately informed his Standartenführer. It would then have been a matter of course, which no SA leader would have mentioned in his report on action taken, that the carrying out of the order was immediately begun.

In the examination of the witness Jüttner the Prosecution endeavored to clear the document by alleging that the stamps on the Jüttner letter (1721-PS) and on the report of the Group (1721-PS) were identical. These two documents were submitted under the same PS number. It was established, however, that the written notations were made by different persons.

THE PRESIDENT: Shall we break off?

[A recess was taken.]

HERR BÖHM: Mr. President, Your Honors, I just spoke of the points which were presented to refute the genuineness of Document 1721-PS. I continue.

This alone would not be conclusive if I did not have the affidavit of the Gruppenführer of the Kurpfalz Group, Fust, and a member of the Group Staff, Zimmermann, who was present at the time, who testify that such an order as the one alleged by the Prosecution was never given. If such an order was never given, then there can be no report on action taken. But it was also proved by virtue of the affidavits of the collective summarization that no order of the kind charged by the Prosecution was issued to the Standarten of Brigade 50.

This we learn from Standarten 115, 221, 126, 168, and 145. All these Standarten were part of Brigade 50. None of these Standarten received any such incriminating order as the Prosecution has alleged. Furthermore, it was proved by the testimony of the former Obergruppenführer Mappes that Lutze countermanded Dr. Goebbels' order of 9 November 1938. Therefore, it was proved that the Supreme SA Leadership forbade participation in Goebbels' operation. It has been proved that this counterorder definitely reached the following groups: East Prussia, Center, Highland, Hesse, Lower Saxony (Affidavit Number General SA-90). Lutze's reaction when he learned of the events of 9 November 1938 has likewise been proved by an affidavit (General SA-71). As shown by the testimony of Siebel, Lutze ordered, as a consequence of the happenings of 9 November 1938, that in future orders of the Political Leadership were not to be carried out. He issued that order because he realized that various SA companies or SA members had been misused on the occasion of 9 November 1938 (Affidavit Number SA-80).

If excesses occurred in which members of the SA participated, this still does not provide the Prosecution with grounds to condemn the SA as criminal. Since it has been proved that Lutze issued a counterorder, those events lie outside the organic body of the SA.

From the sworn evidence of Edgar Stelzner (Affidavit Number General SA-89), we see how individual SA leaders repudiated these occurrences. In this way many SA units kept their records clean. There are whole districts in which nothing occurred.

In the statistical collective summarization of the affidavits, I have shown that the following synagogues were protected from destruction by members of the SA: Bebra, Höchstedt, Waldburg, Saubern, Grossumstadt, Bückeburg. Further attempts to save synagogues were made in Marburg and Giessen by SA members. Moreover, the majority of the rural districts had no synagogues or Jews whatsoever. Absolutely no persecutions of Jews took place in these districts. The rural SA is thereby immediately excluded from this point of the Indictment. It would appear superfluous for me to point out that these excesses were repudiated by the overwhelming majority of SA members.

How the SA Leadership regarded the Jewish question may be learned from the differences, already discussed, which the SA Leadership had with the editors and the Eher Publishing House because of those articles in the *SA-Mann* which it repudiated, although it lacked the power to make its views prevail. Its position with regard to the Jewish question is made completely clear by the fact that in various groups the *Stürmer* was expressly banned by the SA Leadership. This was the case for instance in the Nordmark Group (testimony of Klähn and Jüttner).

The position adopted by the Supreme SA Leadership in regard to the Church question is quite unequivocal. The testimony of the Vicar General, Dr. David, Pastor Burgstaller, and Consistorial Councillor Dr. Rathke show that the Prosecution charged the SA with religious intolerance without justification. By far the overwhelming majority of all SA members still belong to one of the Christian Churches today.

Protestant clergymen served in the ranks of the SA, for instance, Bishop Sasse of Thuringia, from which it appears that the SA Leadership did not exert any pressure to force people to leave the Church. This fact is clearly proved by many affidavits. I recall that Cardinal Count Galen was accompanied by SA members on his trips through the diocese, and that in many districts an order had been issued against scheduling SA training during church services and in the vicinity of churches. It is also a known fact that the SA held divine services in the field. In 1933 the SA furnished the guard of honor when the Holy Robe was exhibited in Treves (Testimony of Dr. David). In cross-examination of the witness Dr. David, the Defense proved that in the famous case in Freising, when the sermon of Cardinal Faulhaber was reported on, the SA Leadership initiated proceedings to punish those who were guilty of such excessive authority.

In regard to the activity of the SA in connection with the guarding of concentration camps and their employment for police and auxiliary police duties, the Prosecution mention only a few cases. The SA is thereby excluded, even according to the Indictment, from the charges concerning the large concentration camps of Auschwitz, Maidanek, Belsen, Dachau, and Buchenwald. In the Vogel case the guilty persons were punished. The misunderstanding created by the Schellenberg affidavit was cleared up by the affidavit of Gontermann (Affidavit Number General SA-16). Schellenberg in London confused the concentration camp and police service with service in the municipal and rural guards.

It is true that after 30 January 1933 a number of policemen and auxiliary policemen were employed for various purposes in certain provinces. They were taken in part from the ranks of the SA, (a) because it was desirable to have some proof of political reliability; (b) because among the many unemployed in the SA there were recruits for the profession of policemen or for auxiliary police work.

When SA members selected as a new occupation, for instance, that of policeman, these were men who actually worked at this vocation. To the extent that they were temporarily employed as auxiliary policemen, which was frequently done as a probation period before being definitely employed as policemen, they were no longer subordinate to the SA but to the competent police authority.

They occasionally still wore the SA uniform for a while, but only because there was a shortage of uniforms, and in such cases they wore an armband marked "Auxiliary Police." They received an appropriate identification card issued by the Police, the Landrat, or other authorities. The SA placed them on leave status for the duration of service of this kind, so that outwardly, too, they were separated from the SA and the latter was deprived of any opportunity of influencing them. In such cases, therefore, the individual concerned never acted as an SA-man. The uniform, which he often still kept for a while with the armband, was his sole and merely outward connection with the SA, and cannot alone decide the issue. This adoption of the uniform of an organization for a purpose and service alien to the organization occurred frequently in the SA and other organizations; for example, as Wehrmacht attendants or Volkssturm members. According to recognized principles of international law, the armband gave the uniform, or even a civilian suit, the sole stamp of the new service, which deviated from the original meaning of the SA.

The individual charges raised against the SA in connection with concentration camp, police, and auxiliary police service can deal only with such purely superficial matters as are unjustly charged against the SA only on the basis of the uniform. The commanding agency was not the SA Leadership, but the State.

The Prosecution tried to refute this argument in the cross-examination of Jüttner by introducing documents which were supposed to prove that the SA had participated in the atrocities in the occupied territories, and in the concentration camps and forced labor camps. They did not succeed in this.

It was clearly established that the Supreme SA Leadership was forbidden to set up SA units in the so-called Reichskommissariat Ostland, that is, Lithuania, Latvia, and Estonia. Here the Prosecution is confusing the SA Gruppe Ostland, which was set up in East Prussia, with the later Reichskommissariat Ostland. Moreover, the Prosecution have already charged another organization with the Schaulen, Kovno, and Vilna cases. District commissioners, provincial commissioners, and officials of the Reichskommissariat Ostland were no more under the Supreme SA Leadership than the SA Obergruppenführer Killinger and Kasche, who were active as ministers. The Defendant Ribbentrop has explained this clearly. The affidavit of the Defendant Frank has solved the Ilkenau case in favor of the SA.

A special role in the cross-examination of Jüttner was played by the so-called abuse of justice, which Sir David emphasized. It has nothing to do with the SA, but rather with the competent ministers.

The case of Hohenstein Concentration Camp was also brought up. In re-examination it was possible to prove that this concentration camp was not a concentration camp for political opponents alone. Old Nazis were interned there. Moreover, the affair of the Hohenstein Concentration Camp became the subject of prosecution by the officials of the Ministry of Justice because of information supplied by SA Obergruppenführer Killinger, when he was still in charge of the SA Gruppe Sachsen. It is something of a novelty to charge the SA with cases which they themselves reported for punishment. In this connection it is an interesting fact that the Prosecution submitted an incomplete document which does not contain the letters of Lutze and Hess. From this document the SA Defense, according to the information which it had received, might have been able to derive only favorable material.

In order to be able to prove the criminal character of the SA, the Prosecution obtained affidavits from former political opponents of the NSDAP. Among them are the affidavits of Minister President Dr. Wilhelm Högner, and Advocate General Dr. Staff of Brunswick. They were given upon orders of Military Government, as appears from the affidavit of Dr. Staff. The two latter ones were submitted by the Defense. It has already been established before the Court that Dr. Högner was frequently mistaken. His description of the march on Coburg is completely wrong.

In reality, things happened in the following way, as testified by witness Jüttner, and the affidavit of Zöberlein (Affidavit Number General SA-21):

A certain German association, the "Schutz- und Trutzbund," was compelled by the municipal authorities at that time to hold a closed session. The NSDAP stressed the right of freedom of assembly as guaranteed to all by the Constitution. Therefore, a protection squad proceeded to Coburg. Upon leaving the railroad station, it was attacked in the street by members of the Leftist organization, who were armed with lead pipes, spiked wooden staves, and the like. Above all, it was also proved that the observations of Dr. Högner, that in Bavaria the SA was trained by the Reichswehr, cannot be correct. It was the Munich Reichswehr General, Von Lossow, who caused the collapse of the Hitler Putsch. As the witness Jüttner testified, the arsenals which had been opened by permission of the Interallied Commission were available to all organizations except the SA. It is equally wrong to allege that Ludendorff was selected to unleash a national war against France at a time when Communist revolts were raging in Saxony and when Ludendorff had already made efforts in 1921 to reach an understanding with France, which at the end of 1923 led to the so-called Foch Plan. When we consider that there were arsenals belonging to Leftist organizations in the

Munich trade union house, then the occupation of the trade union house takes on a totally different aspect. Dr. Högner asserts that the SA had a share in the persecution of the Jews, whereas the Prosecution witness, Diels, emphasized that the SA was not anti-Semitic. Dr. Högner also places himself in contradiction to Pastor Burgstaller, who had particularly emphasized the indifference of the SA in racial matters. It can definitely be admitted that excesses did occur when the Munich Post Office was occupied. But such things occur during any revolution; we might only recall some of the things that happened between 1918 and 1920.

How the situation actually was, seen objectively, is shown by the affidavit of Dr. Staff, Brunswick. There it says:

> "The SA behaved in a manner which, regarded from the legal standpoint of a civilized nation, must be called illegal, but it did not result in any excesses going beyond these measures which were illegal in themselves."

I also submitted an affidavit of Dr. Priese as Number General SA-82. It shows that Dr. Priese as a member of the Communist Party of Germany is active as an expert on the Denazification boards, and that he gave this affidavit with the approval of the Minister for Political Clearance. His opinion is to the effect that the SA cannot be considered a criminal organization within the meaning of Article 6 of the Charter.

Through the mass enrollment of members in the SA after 30 January 1933 the so-called uniform whole of the NSDAP broke apart even more than had been the case before that date. Elements of the German population entered the SA, whose aims and aspirations had nothing to do with the goals of the SA.

The affidavit of Diels shows that in the Berlin SA Communists were admitted in large numbers. The collective summarization reveals that this was also the case in other cities. In this connection I must also refer to the incorporation of all the Protestant Youth Associations into the Hitler Youth in 1933, which were then transferred to the SA. Vicar General Dr. David declared that this was also the case among many of the Catholic youth. The aims which the leading personalities had in mind when this transfer was made becomes clear from the quotation from the *Akademische Monatsblätter* of June 1933 (Document SA-317), which reads as follows:

> "Realizing this, it is up to us to take a hand with sincere conviction in common honest work with all constructive forces of our nation, in order to create new and better things and to prevent the worst. For this reason let us instil our Catholic wealth of Christian conservative ideas and Christian evolutionary forces in the new Germany, to help in the formation and deepening of its spirit with our spirit."

If the SA were to be convicted, this declaration of criminality would also affect these men, who were not concerned with the spirit of the National Socialist Party, and some of whom were to act as a brake against the radical elements in the Movement.

The largest number of men joined when the Stahlhelm was ordered to be transferred to the SA in 1933 and 1934. The original so-called "Traditions-SA" had had only 300,000 members, as was stated some time ago. The Stahlhelm, on the other hand, comprised more than one million members, most of whom differed considerably from the SA men of the period of struggle, both as regards their general attitude and their outlook on life.

In the Court sessions of 28 February to 2 March 1946, the Prosecution moved to except, among others, the SA-Reserve from the declaration of criminality.

By an order of the Supreme SA Leadership (Hitler) dated 6 November 1933 the SA-Reserve 1 was formed of members of the Stahlhelm between 36 to 45 years of age. The SA-Reserve was subsequently placed under the command of the SA-Gruppenführer in accordance with a directive issued by the same authority on 25 January 1934, and was thereby transferred to the SA under the designation SA-Reserve 1 (Exhibits Numbers 13 and 17 of the Document Book Stahlhelm-SA). Part of the SA-Reserve 1 remained in existence up to the end of the war and has thus been excluded from the declaration of criminality. A further part of this SA-Reserve 1 was attached as small reserve groups to active SA companies in the course of the last few years. The remainder was gradually incorporated in the active SA after 1934. Such reorganizations were carried out in accordance with lists, or by virtue of specially issued orders. The reason for these transfers were partly due to technical considerations such as local combinations, especially during the war, when SA Stürme shrank in size because of inductions into the Armed Forces. In many cases these reorganizations were also made in order to facilitate better control within the SA. It would thus be unfair and incomprehensible to treat this latter group differently from the former, to make chance decide the fate of the members of the Stahlhelm who remained in the SA up to the end of the war.

The members of the Stahlhelm transferred into the SA by order of Hitler in 1933 and 1934 were transferred to the SA as a body. For that reason alone, according to the ruling of the Tribunal of 13 March 1946 under 6(a) 2 and 6(b), they cannot be declared criminal. With reference to this I draw your attention to the plea of my colleague, Attorney Klefisch, on 15 August 1946. It is explained there that those persons who entered an organization involuntarily belong to the class of innocent followers who may be assumed not

to have desired to support the aims and activities of the organization. Therefore, an accusation of guilt cannot apply to them, even if it had been possible for them to resign immediately.

The transfer took place as follows: on 27 April 1933 the entire Stahlhelm was placed under Hitler's orders by the leader of the organization, Seldte. On 21. June 1933 the Junior Stahlhelm, and on 4 July 1933 the entire Stahlhelm, were subordinated to the Supreme SA Leadership by Hitler's own orders. According to the decree of 4 July 1933 the Jungstahlhelm and the sports units, later called Wehrstahlhelm, that is, Stahlhelm members up to the age of 35 years, were included in the active SA (Exhibits 1, 6, 7). The transfer of the original Stahlhelm, that is, members of the ages of 36 to 45 years, was effected, as mentioned before, on 25 January 1934. This transfer and inclusion, both in the case of the Wehrstahlhelm and the original Stahlhelm, took place without the members being asked, partly by transferring the membership lists to the SA. This is proved by the affidavits which I have submitted, and the testimony of Von Waldenfels, Hauffe, and Gruss.

The decrees issued by Hitler after 1 December 1933 (Law Regarding the Unity of State and Party), are without doubt to be regarded as legal decrees. The preceding orders and instructions have, practically speaking, a similar character and were sanctioned by the law of 1 December 1933, as well as by later decrees and executive orders.

The transfer of the Stahlhelm did not take place without friction. In the case of many members coercion was apparent. Many elements in the organization did not agree with the subordination of the Stahlhelm or with the co-operation of the Stahlhelm in the seizure of power. Düsterberg, who must be regarded as the head of the opposition to Seldte's policy, objected in particular. This attitude resulted in his arrest, as well as in the numerous arrests of Stahlhelm members which were made by the Gestapo in the spring of 1933, especially in Brunswick. Members of the Stahlhelm who did not obey the order for transfer were forced into service by State agencies and occasionally punished. (Affidavit 1, Figures 3, 2, as well as testimony of Hauffe and Von Waldenfels.)

Just as the SA fell apart because of the events before and after 1933 through the influx of people with the most widely different aims, so this also happened in the case of the Stahlhelm because of the events of the year 1933, which had such serious and dreadful consequences for the German people. The Stahlhelm disintegrated. For some of its members it had appeared of importance that at the time of the transfer they had been expressly assured of a certain amount of independence under their own leaders and with their old uniforms, as well as of further connection with the Stahlhelmbund. This is shown by nearly all documents, affidavits, and testimonies. When these assurances were not put into practice the

opposition group's resistance against Seldte increased. On the part of the National Socialist leaders of the State this group was considered politically unreliable and reactionary.

This is also confirmed by affidavits and the testimony of witnesses, and especially emphasized by the newspaper reports submitted, which represent only a small portion of many similar reports. (Evidence: Exhibits 32, 33, 35, 36, 37, 39, 40, 48, 51, 53, 54, 55.) The National Socialist paper *Rheinfront* for 27 July 1933 stated: "The Stahlhelm was never National Socialist at heart." In another paper of 30 July 1935 it said: "It is certain that the Stahlhelm was always to be found with the opponents of the Movement." Another newspaper of 8 August 1935 described the Stahlhelm as "a hotbed of hostile and reactionary forces."

It should be noted that the majority of the members of the Stahlhelm transferred to the SA remained members of the Stahlhelmbund or the later so-called Stahlhelm Veterans' League. According to the decrees of 14 July 1933 and 27 January 1934 (Exhibits Numbers 8 and 18) Stahlhelmer transferred to the SA were expressly permitted this dual membership. In conclusion, your attention is drawn to Exhibit Number 21. According to this the Press Department of the Supreme SA Leadership announced on 25 April 1934:

> "Members of the former Stahlhelmbund who have already been incorporated into SA-Reserve 1 are not at present permitted to resign from SA-Reserve 1."

A large number of the members of the Stahlhelm represented a body within the SA, united by common ideals, who regarded the events of the time with the greatest distrust. Opposed to them was a group of Stahlhelm members and former Stahlhelm leaders, headed by Labor Minister Seldte, who approved the national revolution and provided the SA with 60 high SA leaders, but who naturally condemned abuses and excesses of authority in the severest possible manner. Spokesmen from either of those Stahlhelm groups have been heard before this Tribunal, namely, the witnesses Gruss and Jüttner. One of these witnesses came from the very heart of the SA, the other was not an SA member. One of them, as a Stahlhelm leader, acknowledges his membership in the SA, which he knows intimately, while the other remains outside the SA and is opposed to it. The latter is the exponent of that wing of the Stahlhelm which toyed with ideas of opposition until the end of the Third Reich. It can be said without doubt that the Stahlhelm represents an element of opposition to the so-called "Old Fighters" of the SA. The above-mentioned exhibits, affidavits, and testimonies are irrefutable proof of this.

Upon joining the SA the Stahlhelm members brought with them their own Stahlhelm ideology, which differs in essential points from

National Socialism. Politically speaking, the majority of them rejected the totalitarian claims of any political party, and also the Führer principle. As before, they remained in constant touch with their old Bund which, until its dissolution in 1935, continued to exist under the name of the NSDFB (Stahlhelm). Even after it was dissolved they formed strong, close-knit groups among themselves and held comradely meetings almost all over Germany. In many of those groups the hope of a political revolution continued to live for a long time.

As in other parts of the SA, former opponents of National Socialism, particularly Marxists, found a reception in the ranks of the Stahlhelm. Thus in Brunswick, for example, the Reichsbanner joined the Stahlhelm (D-947). The insufficient camouflaging of the activities of the Reichsbanner resulted in its being dissolved. The members transferred from the Stahlhelm to the SA, likewise the SA members, repudiated all crimes such as those mentioned in Article 6. As ex-servicemen they repudiated war, particularly aggressive war.

The repudiation of Himmler's race policy is clearly demonstrated by the nomination of the Deputy Leader Düsterberg as candidate for the office of Reich President in the election of 1932, and by the extraordinary popularity which Düsterberg enjoyed with all Stahlhelmer. Nearly all the affidavits and evidence show how far removed the Stahlhelm was from crimes against humanity.

In connection with the incorporation of the Stahlhelm it must be taken into consideration that it took place at a time when there were internal disputes and weakening in the SA, when the work of the SA had already been completed through the seizure of power, and not at the time when Hugenberg, Schacht, and Hitler were forming the so-called Harzburg Front. The completion of this enrolment in the SA took place at a time when the SA was totally without significance.

May I finally remark, with reference to the subject of the Stahlhelm, that by virtue of coercion, that is, by an order, about 500,000 members of the Wehrstahlhelm and about 500,000 members of the Kernstahlhelm were transferred. There remained a further half million Stahlhelm members over 45 years of age, who did not join the SA at all because an order for this transfer was lacking. Only in very few districts, indeed, were these older age groups also transferred to the SA because of the infringement of orders by subordinate SA authorities.

Another group occupying a special position in the SA is the Mounted SA (Reiter-SA). The testimony has very clearly shown that during the entire period of its existence, the Mounted SA possessed a far-reaching organizational independence. The aims, duties, and activities of the Mounted SA were not political, but limited to

equestrian sports and the care and breeding of horses. In the course of detailed testimony before the Commission, the Prosecution did not succeed in proving that the Mounted SA had participated in any crimes against peace or humanity. 'In view of the clear evidence in favor of the Mounted SA, I shall limit myself to presenting the essential points to the Tribunal in summarized form.

The charge that the SA co-operated in the seizure of power by the NSDAP does not in any way concern the Mounted SA, because the Mounted SA was not formed until after the seizure of power. The Mounted SA did not grow out of Adolf Hitler's storm troops, but out of the hundreds of so-called rural riding associations which existed all over Germany until 1933 as entirely unpolitical sport and breeding associations. The incorporation of these rural riding associations into the SA after the seizure of power as part of the so-called "co-ordination" (Gleichschaltung) did not take place voluntarily. It was carried out by official decree against the inward opposition of most members of these associations. This official decree was the result of negotiations between the chief of the rural riding associations and the Chief of Staff of the SA, Röhm, which were initiated by the Reich Ministry of the Interior in the summer of 1933. Those riding associations which resisted the decree were threatened with dissolution, which, if they still refused, was carried out.

Since those associations constituted an agricultural necessity, most of the associations obeyed the decree under the pressure of circumstances. Even after the incorporation of the Mounted SA into the SA it retained its independent character as an organization until the very end. The former riding associations which now called themselves SA Mounted Companies (Reiterstürme), were headed by the Reich Inspector for Riding and Driving (Reit- und Fahrwesen), Litzmann, in Berlin.

With respect to the size and composition of the Mounted SA, the testimony has shown that it had approximately 200,000 members, of whom 80 to 90 percent were horse-owning farmers. After the seizure of power, the Mounted SA was joined by the riding clubs then established in many cities, which up to then had likewise led an entirely unpolitical existence devoted only to sports.

The activity of the Mounted SA was in keeping with its sporting and breeding tasks. Training consisted in riding and driving and tuition in matters pertaining to horses. The leading activity of the urban units was the organization of hunts and tournaments, just as is done by riding clubs everywhere in the world. As a rule they did not ride in uniform but in civilian clothes. The wives and children of the members took part in the riding. In rural areas their activity was mainly limited to instructing the farmers about all important

matters concerning horses, especially driving and the treatment of sick horses. For these reasons, the members of the Mounted SA everywhere in Germany considered themselves primarily as horsemen, not as SA men.

The Mounted SA deliberately refrained from giving any political support. It neither disseminated any political propaganda nor gave any political training. It never was a political fighting unit. The decisive factor in the selection and promotion of leaders in the Mounted SA was not political activism, but solely riding ability and unblemished character.

The testimony has clearly shown that the Mounted SA in no way participated in any crimes against humanity. Neither did it ever co-operate in the excesses against the Churches, the Jews, the trade unions, foreign laborers, or prisoners of war. On the contrary, members of the Mounted SA frequently intervened in favor of persons who were politically persecuted.

As the presentation of evidence has shown, any anti-Semitic attitude was completely alien to the Mounted SA. The NS-Riding Corps was always well disposed toward the Church. It is a significant fact that a non-Aryan, Fuldauer, as is shown by his affidavit (SA-20), was a cofounder of the NS Riding Corps at Wiehl in the Rhineland, and that he was a leading member of the Mounted SA there for a fairly long time after the seizure of power.

Since the Mounted SA stood aloof from the Party, in many areas of Germany it even became a haven for the politically persecuted. Numerous Freemasons and non-Aryans were members of the Mounted SA, and tried to cover themselves by pointing out their membership in a National Socialist organization. Under these circumstances it is not surprising that the NSDAP, as has been shown by the presentation of evidence, regarded the NS Riding Corps with the utmost suspicion. Members of the Mounted SA were refused membership in the NSDAP because their activity in the Mounted SA did not give proof of their political reliability.

Moreover, the presentation of evidence has clearly shown that the Mounted SA did not participate in a crime against peace.

According to the claims of the Prosecution, Hitler is supposed to have given the Mounted SA the task of selecting the horsemen among the new generation for the German Armed Forces. Here the Prosecution based its case mainly on certain propaganda articles by an unknown author which appeared in the periodical *Der SA-Führer*. All the witnesses who have testified concerning the Mounted SA have reported that the contents of these editorials were in open contradiction to actual conditions. It has been repeatedly established in this Trial that the Party Leadership permitted itself to be guided

solely by propagandistic viewpoints. The Prosecution have not succeeded in adducing a single actual case where the Mounted SA, in more than 10 years of existence, ever planned or ordered any activity which could be regarded as a preparation for, or support of, a war of aggression.

The highest officer of the German cavalry in the time prior to the outbreak of World War II, the well-known Generaloberst Guderian, has taken an unequivocal stand on this question. I quote:

> "There was no military collaboration between the German Wehrmacht and the NS Riding Corps, either in a tactical or a strategical respect. The cavalry of the Wehrmacht trained the next generation of horsemen itself, and did not apply for the collaboration of the NS Riding Corps. Relations with the NS Riding Corps along these lines were neither sought nor maintained on the part of the Wehrmacht. . . ."

In connection with this, General Guderian gives the following convincing reasons:

> "Whereas 18 cavalry regiments were still in existence in 1935, only one cavalry brigade was available at the outbreak of war, which in the course of the war was later increased to a cavalry division. The armored command had taken the place of the cavalry, which is obvious from the fact that 40 percent of the tank officers came from former cavalry regiments. In view of this development, an incorporation of units of the Mounted SA into the Wehrmacht was never planned nor did it ever take place."

Moreover, within the Mounted SA itself no training of any kind for military tasks was practiced. At no time and in no part of Germany were cavalry maneuvers like those in the Wehrmacht cavalry ever carried out by the Mounted SA. Rather was their activity limited to the breeding of horses, which was important for the farmers, and the kind of equestrian sports which are practiced in all countries of the world.

Nor can the charge be maintained by pointing to the so-called Riding Certificate. According to its wording, the Riding Certificate gave its owner the right to be allowed to serve with a mounted unit in the Army. This Riding Certificate, however, could be obtained by any sportsman, even if he was not a member of the NS Riding Corps. This corresponded to the understandable desire of every keen horseman to be assigned to a mounted unit in case of conscription in the Army, just as an enthusiastic mountain-climber or skier prefers to do his military service in the mountain units. In practice, however, this desire was considered by the Wehrmacht only on very rare occasions, because after 1933 the Wehrmacht had almost completely deactivated the cavalry. Thus most of the holders of Riding

Certificates were in reality assigned to infantry or motorized units when they were inducted.

Furthermore, the goal of every member of the Mounted SA in his sports activity was not to acquire the Riding Certificate, but the Riding Badge, which was worn with pride by every rider. This badge has been submitted to the Tribunal in its original form and is probably the only badge of an NS unit without the swastika. A militaristic spirit was not fostered in the Mounted SA. The majority of the Mounted SA were farmers. It is well known that the farmer is by nature no friend of war. The urban units of the Mounted SA, however, maintained close international relations with all countries that engaged in riding sports until the outbreak of war. Numerous foreigners, some of them in official positions, were constant guests of the Mounted SA. At the outbreak of war general consternation reigned among them.

As regards the character of the General SA, the members of the Mounted SA were of the opinion that the SA, to which indeed the Mounted SA was not attached until after 1933, had no criminal character. Insofar as excesses occurred within the General SA, the members of the Mounted SA must have perceived that these excesses by individuals were not in accordance with the program of the SA, and they heard with satisfaction that the SA Leadership disavowed these things and tried to prevent repetitions.

It might also be pointed out that not one of the chief defendants was ever in any kind of relationship with the Mounted SA. No member of the Mounted SA played a leading political part during the National Socialist regime.

Justice demands that the Mounted SA be exonerated as regards the charges brought against it, since both of the other sports organizations of the Party, the National Socialist Motor Corps and the National Socialist Flying Corps, were quite properly not indicted, because of their sporting aims. Thanks to the political influence of their leaders, the NS Motor Corps and the NS Flying Corps succeeded in achieving complete independence from the SA. During the whole period of its existence the Mounted SA likewise made efforts to secure this complete independence, but obtained it only in part. In its leadership it remained subordinate to the SA. The Mounted SA was probably not given complete independence for the reason that the Party leadership did not consider it politically reliable. Under these circumstances a conviction of the Mounted SA would be felt to be a grave injustice, quite apart from the fact that the reproach of preparing for a modern war should rather apply to those who were trained in motor vehicles and airplanes than to those who devoted themselves to equestrian sports and horse breeding.

Still another group within the SA, which had even less to do with political aims than the Mounted SA, is represented by the so-called medical units.

In the formation of the latter the pressure of legal coercion made itself strongly felt. Legal coercion means that decrees, enactments, or statutes exist by virtue of a law, which make service in an organization, for instance in the SA, compulsory. This applies to the majority of the so-called SA doctors. This is shown by the affidavit of Dr. Carrie (Affidavit Number General SA-74). In his affidavit it is stated that if physicians refused service in these units, they were dismissed from municipal service.

Moreover, who can find anything criminal in their activity? Their task consisted in training persons for first aid in case of accidents, in installing medical aid stations, and in medical service in case of natural disasters, as well as in being in attendance at sports events.

The entrance of a medical man into the SA was made in his capacity as physician, mostly with the rank of a Sturmbannführer, or at least that of Obertruppführer. The physicians in the SA, as high up as the groups, were active in all the offices of the SA in an honorary capacity. As time went on a medical company (Sanitätssturm) was formed in every SA Standarte, which on the average comprised 100 members.

Trained SA medical men were, in general, constantly being detailed from the ranks of the medical companies to the individual SA companies. In practice it was arranged for each company to have about 4 or 5 SA medical men. The training of the SA medical men was conducted by physicians in keeping with the Geneva Convention. Part of the medical men were even trained directly by the Red Cross. The duties of the SA medical personnel corresponded to a large extent to the duties of the Red Cross.

The affidavit of Dr. Menge, Hanover, states that a large number of water-sports clubs were taken over by order of the SA as SA naval companies (Marine-SA Stürme). These SA naval companies differed from other SA units in that there was hardly one "Old Fighter" to be found in their ranks. The whole organization was set up after 1933. Their duties consisted exclusively in water-sports activities. Compulsory enrolment in the SA was also the case with the border defense units, as will be seen from the collective summarization of affidavits. From them it can be seen that this concerned a part of the SA which belonged to the latter only formally and for other than the usual reasons. I might stress that this refers to the enrolment of the border defense units organized in the autumn of 1931 under Brüning and Severing, which were forcibly incorporated in the SA in the autumn of 1933. I might also point

out that the duties of the so-called Reich Board of Guardians for the Education of the Young (Reichskuratorium für Jugenderziehung), which was founded in 1932, were transferred to the sphere of the SA. In this Reich Board of Guardians for the Education of the Young there was a chief of educational matters, an office also found in the SA. The so-called AA duties, the so-called border defense tasks, fall within his jurisdiction. These AA tasks are mentioned in a document of the Prosecution. Unequivocal proof is thereby furnished of the incorporation of the border defense units into the SA in 1933.

In my document book, in Document SA-218, I have submitted an order of the Supreme SA Leadership of 7 October 1933. It shows that the Reich Minister of the Interior decreed, under Br. I. A. 5400/26. 9. of 3 October 1933, that the auxiliary engineer service of the Technical Emergency Service (Technische Nothilfe) was to be transferred to the SA. The transferred auxiliary engineer units supplied by far the majority of the personnel for the SA engineer companies. It is therefore quite natural that these units were used in natural disasters, since they originated in the Technical Emergency Service.

A predominant part of the SA members who entered the SA after 1933, for example members of the upper classes of the secondary schools, students, candidates for government positions, and members of industrial plants and skilled trades, joined the SA not of their own free will but by virtue of decrees, enactments, and statutes. Not even the Prosecution's ingenious but irrelevant interpretation of the Indictment can change that. The students, for example, served with the SA University Department after they had become members of the local SA companies. None of these people could vote before 1933. The election in March 1933 determined their evolution. They cannot in any way be held responsible for this. They were born into this period; they are the victims of this period. They believed they were serving a state which was recognized by all nations. The greater part of these young men were at the front. Many sacrificed their health and their lives for the Third Reich, which demanded everything of them. They marched out believing in their duty, believing that they were performing their mission. Some of them came home from the World War deceived and disappointed, and are now to be stamped as criminals by the indictment against the organizations. In my collection of documents I have submitted a large number of enactments and decrees which represent the fundamental reason for the entry of these young people into the organizations. I need not mention them separately; they are known to the Tribunal. Are these people now to be punished because they fulfilled the duties which were imposed upon them by law and statute? From these young men who were enrolled

in the organizations came the active fighters against the National Socialist State. Let me give one example: the case of Scholl, who rebelled against the coercion of this state.

These young men were born at a time when the first World War was inflicting its wounds upon the European countries. These young men suffered most from the consequences of the unfortunate development which shortsighted men created in Versailles. These young men suffered from this problem, which the bulk of the German people, including the Supreme SA Leadership, always wanted to solve by peaceful means. The witness Gisevius, too, recognized this clearly. He stated that in the years before 1938 feelings among the majority of the SA must have been exactly the same as the feeling among the majority of the German people. And this feeling was beyond a doubt that the very thought of war was sheer madness. He also declared and proved that the assumption that the SA participated in war crimes must likewise be denied.

This treaty of Versailles, and the chief postwar events, the blockade of the Republic and its struggle against Communism, the currency inflation, the ruin of the middle classes, unemployment, civil strife, party armies, Parliamentary chaos, laid the foundation for the young generation and for its evolution. This should not be forgotten when passing judgment on the fate of the young generation within the organizations, who did not vote for Hitler in 1933.

It is regrettable that this group structure of the SA after 30 January 1933 cannot be explained to the High Tribunal with statistics. These statistics are lacking because of the absence of the witness Wallenhofer. However, I am able to submit a fairly accurate outline, which the Tribunal ought to have in order to get a clear picture of the SA. This outline is contained in the summarization of the collective affidavits.

As previously mentioned, on 30 January 1933 the traditional SA had 300,000 members. The Stahlhelm was incorporated in the SA by order, as follows: In the first batch there were 550,000 members; in the second batch there were 450,000 members. The following were transferred by order: The rural riding associations with about 200,000 members; the water-sports clubs with 50,000 members; the border defense units with 100,000 members; the auxiliary engineers' units of the Technical Emergency Service with 50,000 members. In addition, Samaritan leagues and other Red Cross associations were transferred by order. By virtue of official decree, physicians were transferred to the SA medical associations, totalling 60,000 members; also, by order, the Kyffhäuser Society with 1,500,000 members. By virtue of legal enactment university students and students of technical high schools

were enrolled with 100,000 members. Students of technical and secondary schools—by virtue of the decree of 9 September 1933—and religious youth societies by virtue of order joined the SA with 150,000 members. The Erhardt Brigade was enrolled by order with 150,000 members; the Oberland Aviation Sports Society and the Frontbann with 200,000 members. Civil servants, especially the younger civil servants, were enrolled by virtue of government decree, totalling 200,000 members; the honorary leaders and occasional duty leaders of the SA, 20,000 members. Other additions to the SA amounted to 420,000 members. Of these 420,000 men, 200,000 came from the camps of the Leftist organizations, such as for example Red Front and Reichsbanner. This gives a total membership of 4,500,000 members. Withdrawals in 1934, immediately after 30 June 1934, were as follows: Kyffhäuser Society, 1,500,000; National Socialist Motor Corps (NSKK), 450,000; SS, 250,000; Political Leaders, 150,000. From 1934 until the time when membership had reached one and one-half millions, there resigned: War casualties and physically disabled, 350,000; as a consequence of legal proceedings, 40,000; by transfer to other organizations, 260,000. Thus the number of members amounted to 1,500,000 members.

In the course of the next few years there was a great turnover in personnel. A number of members died while others left on account of illness. These were replaced by the rising generation. They came mostly from the Reich finance schools (14 schools with about 50,000 members) or were made up by students and the younger civil servants, who were legally compelled to serve in an organization or else came from the Hitler Youth, whence they were transferred to the SA. The ruling of the Tribunal of 13 March 1946, Paragraph 6 (a), Figure 2, emphasizes that it would be of importance to establish whether membership in the SA was in general voluntary or the result of legal decree. The preceding outline clearly shows that in general there can be no talk of voluntary membership in the SA, but that in the majority of cases membership was secured by virtue of orders or legal compulsion. Therefore, large numbers were incorporated in a body by virtue of official enactments or decrees by Hitler, which according to the Law concerning the Unity of State and Party were legal decrees or had a legal character. Accordingly, a conviction of the SA as a collective organization is not possible because no unified objective exists.

If we picture to ourselves the period after 1933, we come to realize that the Third Reich was a national police state. From the affidavits of many transferred members of the Stahlhelm it can be seen that as early as 1933 or 1934 attempts to resign from the SA, unless based on very weighty reasons, such as grave illness,

were considered by the State authorities as the expression of an attitude hostile to the State. Other reasons than those of health were not recognized. Significant in this connection is the decree of 27 February 1936 by the Reich and Prussian Minister of the Interior, submitted under SA-222, in which it says:

> "... in every case a thorough investigation is to be made as to the reasons why the government employee resigned from the Party. If he did this because he disapproved of the program or the political tendency, he will not be allowed to remain a government employee. But even if this is not the case, the resignation of a government employee from the Party can, in view of the close relationship between Party and State, lead to the conclusion that the employee lacks the inward allegiance to the National Socialist State or the necessary spirit of sacrifice."

If we look at Document SA-221, we read the regulation that the sworn obligation to the Führer makes it impossible for anybody to leave the SA in the same way that one would withdraw from any other association, and that only the development of a physical disability or employment in some other capacity would enable one to resign from the SA. Other reasons could only refer to one other possibility: expulsion. The circular decree of the Reich and Prussian Minister of the Interior theoretically recognizes the possibility that, although expulsion from the Party and its organizations is designated as a severe punishment, the person concerned, with his wife and children, might even be deprived of work and food. That this regulation was already applied in practice before, is evident from a judgment of the Provincial Labor Tribunal of Bielefeld, according to which, in cases of expulsion from the SA, the employer could not be expected to provide further employment (Document SA-220). It is not surprising that in the National Socialist State regulations were carried out before they became legally effective.

In the official commentary by Pfundtner-Neubert the following is said concerning the decree of 28 February 1939:

> "This sort of new order in the legal system is in keeping with the principles of National Socialist State leadership. It does not proceed in the same way as the constitutional state, which first issued high-sounding laws, which, however, it was unable to carry out because the necessary conditions were lacking, apart from the fact that the executive branches of the Government were too weak to do so; the Government of the Third Reich first creates the actual conditions which are necessary for the execution of a government measure, and then issues the corresponding law."

Moreover, I might refer to Affidavits 1, 2, 3, 4 of the Stahlhelm, to the testimony of Hauffe and Von Waldenfels, and to Affidavits SA-61 and 81, which stress the impossibility of resigning from the SA.

An attempt to resign for reasons other than health would have resulted in expulsion. Such expulsion entailed, in addition to an automatic subjection to police supervision, the loss of one's economic position or profession, especially in the case of government officials and employees, or economic boycott and the danger of arrest because of political unreliability. The prerequisite for every profession was the so-called stamp of political reliability, which was obtainable only within the organizations, and the administration was not inclined to depart from it out of consideration for alleged or actually existing professional qualifications or family circumstances. Political reliability was demanded by the Third Reich. Therefore, it stimulated service in the organizations by decrees. To exclude oneself meant what is written in Affidavit Number 81:

> "It was widely known that a refusal to obey the decrees of State and Party led to the supervision of one's activity, since it meant excluding oneself from service to the national community."

Besides that, there was no reason to refuse to work for the national community, since criminal aims, methods, and activities of any kind were unknown. This was clearly shown by the collective summarization of 17,089 affidavits. Moreover, the conduct of persons who were enrolled by virtue of orders, that is, by legal coercion, cannot constitute a legal charge if the involuntary character of their enlistment has been proved. To sum up once more, in conclusion I might say: (1) It has been proved that, if illegalities occurred, these acts were only acts by individuals, and consequently cannot be charged against the organization; (2) that the SA Leadership neither ordered nor tolerated those abuses, and is, therefore, free from guilt; (3) that these excesses can in no way be traced back to a criminal education, or in any way to a conspiracy with criminal aims.

Truth and justice demand that an organization of millions, or its leadership, should not be declared criminal on account of these abuses by individual members of the organization, after it has been established that the leadership at no time aimed at criminal actions, and that the bulk of the members of the organizations never committed any criminal acts. The fact that several of the principal defendants were honorary leaders of the SA in no way alters the evidence presented in regard to the SA. When for a short time Hermann Göring headed the SA it numbered only

a few thousand men. At that time it was no different from the Reichsbanner of the SPD.

The Leadership Corps of the SA was composed neither of ruffians nor political flotsam. A few leaders—five altogether—who had not proved to be satisfactory were eliminated during the events of 30 June 1934. This is the only criticism which can be made against Röhm, the Chief of Staff at that time, that, although he aimed at order and legality in his political actions and dealings, he did not expel these five persons at the right time and thereby played into the hands of his opponents. This involved four percent of the Senior Leadership Corps, and therefore a small fraction which never could justify a conviction. Among the salaried Obergruppenführer and Gruppenführer of the period from 1934 to 1945 there was not a single one who had been previously convicted. The Supreme SA Leadership had to require this of its members, because there was also a regulation that the ordinary SA member had to furnish a certificate of good conduct from the Police upon his admission. None of them was one of the so-called failures in life. They all had been trained for a definite profession, with good opportunities for advancement, before they entered the Leadership Corps of the SA as salaried members.

That the political objective of the SA was based on patriotism alone has been conclusively shown by the evidence. Röhm did everything to strengthen the idea of community among the German people. His aim was to strengthen the confidence already won. He prosecuted the abuses which occurred during the political revolution. He wished to win over the trade unions, not to crush them. Lutze, although himself a weak personality, repeatedly challenged occurrences and measures within the Party. He put himself in opposition to the leading Party line. In an affidavit which I have submitted in evidence it is stated that he condemned the so-called "Nazism" of the NSDAP. This is also the chief explanation of his universally known and implacable opposition to Himmler and Bormann. There was hardly a question on which he, as SA Chief of Staff, agreed with both of these men. This applies especially to the question of the "master race" and the attitude towards the Jews, to the Church question, as well as to the attitude towards political opponents.

If the Tribunal are seeking objectively to find the ones guilty of the unspeakable disaster which has befallen the whole world, then let them proceed from the individual point of view. We find this attitude expressed in a speech of Pope Pius XII, which he made on 20 February 1946. I quote:

"Erroneous ideas are circulating in the world, which declare a man guilty and responsible solely because he was a

member of, or belonged to, a specific community, without making any effort to examine or to investigate whether there really exists a personal responsibility on his part for such acts of commission or omission.

"That implies the arrogation of the rights of God, the Creator and Redeemer, who alone, in the mysterious planning of His ever-loving providence is the absolute Master of events, and as such, when He so decides in His eternal wisdom, links together the destinies of the guilty and the innocent, the responsible and the not responsible."

HERR HORST PELCKMANN (Counsel for the SS): May I have the attention of the Court for just a few minutes. In my plea on Monday I omitted important statements, for example, those concerning Germanization, the Einsatzgruppen, the concentration camps, and mass exterminations. Instead of discussing these I referred to my written plea. The President has repeatedly declared that the Court is willing to study the written statements of all the defense counsel. Yesterday the Tribunal...

THE PRESIDENT: When did they receive them? I said, we will study them when we receive them; we have not yet received them.

HERR PELCKMANN: That is just what I meant, Your Lordship. Today I learned through the General Secretary and the translation section that an English translation will not be prepared for the judges. I do not know whether there is a Russian or French translation available for the judges. Without the parts I omitted my final speech is incomplete and cannot be understood. Therefore I shall give the Tribunal a complete copy of my plea in German and respectfully ask for a translation.

THE PRESIDENT: That will be done in every case. Dr. Gawlik?

DR. HANS GAWLIK (Counsel for the SD): Your Lordship, I also ask permission to submit a complete copy of my plea for translation, as I have omitted important parts, too.

THE PRESIDENT: Certainly, certainly. Would the Prosecution like to begin today?

SIR DAVID MAXWELL-FYFE: May it please the Tribunal. In 1938 Hitler spoke in the Reichstag, and I quote his words:

"National Socialism has given the German people that leadership which, as a party, not only mobilizes the nation but also organizes it. National Socialism possesses Germany entirely and completely.... There is no institution in this State which is not National Socialist."

We know now the kind of leadership that National Socialism did give the German people. We know how and for what purposes the

Nazi Party mobilized and organized the German nation—for world dominion at the cost of war and murder. The entire and complete possession of Germany by National Socialism meant the possession of the people, body and soul, by the organizations of the National Socialist Party and Government.

For what purpose were the Nazis seeking this possession of the people? Their aims were to have a controlled but fanatical police state geared for military aggression. If one imagines an "Ersatz" Machiavelli presenting what this required, he well might have considered necessary: (1) A quick method of registering your laws and decrees. For this you need a pliant and complacent Cabinet with full legislative powers—the Reichsregierung; (2) quick suppression of any signs of opposition or freedom of thought. Here you want an espionage service and a police which will strike at once—the SD and the Gestapo; (3) a complete check and control of public opinion. This is provided by the pressure of a fanatical Corps of Political Leaders on a propaganda-soaked public; (4) a Praetorian guard who will rid you not only of any "turbulent priest" but of any person with a creed of his own, and so you have the SS; (5) a spreading executive hand which will grasp the population in its clutch of physical training and mental preparation for war; which will thrust that population forward and downward when general violence is necessary; which will hold it firm in the ideologies of terror at home and abroad. What could be more suitable than the SA who had just won "the battle of the streets"? (6) an instrument to turn your existing military forces to your purposes; to make them ready to commit any act, even if it is contrary to military tradition and repugnant to soldier-like qualities; to give unquestioning assent to the enslavement of other nations, to co-operate and hold the ring for the agencies of oppression to destroy national life and the dignity of the human spirit. This was the function which the General Staff and High Command must perform.

Speed of government, denunciation, absence of free thought and speech, internal suppression, external trained and calculated force. These are the eternal interlocked weapons without which tyranny cannot flourish. These are but other names for the organizations which we have indicted as criminal, and by which these defendants and their colleagues were able to lead and organize and possess a nation.

When Mr. Justice Jackson addressed this Tribunal on 28 February he emphasized that it was not our purpose to convict the whole German people of crime. I say again that we do not seek to convict the people of Germany. Our purpose now is to protect them and to give them an opportunity to rehabilitate themselves in the esteem and friendship of the world. But how can this be

done if we leave amongst them unpunished and uncondemned those elements of Nazidom which were most responsible for the Nazi tyranny and crimes and which, as this Tribunal may well believe, are beyond conversion to the ways of freedom and righteousness?

Nor is it only the German people that we seek to protect. All Europe needs protection. Consider the position of Europe today. Among the Germans who were Hitler's there are many thousands of men and women who with their own hands have done murder—murder not perhaps of a single person, but of many. Hundreds of thousands, nay, millions more, became disciples of their Führer's creed of hate and cruelty. Amongst them are those whose profession and training was to command and lead, militarily and politically, men who are still as fanatical and ruthless in their lust for power as at any time during the last 25 years. You remember the words, I quote:

> "Fight? Why do you always talk of fighting? You have conquered the State and if something does not please you then just make a law and regulate it differently! Why must you always talk of fighting? For you have every power! For what are you still fighting? Foreign policy? You have the Wehrmacht—it will fight the battle if it is required. Domestic policy? You have the law and the police, which can change everything which does not agree with you."

Such were the precepts of the "Hoheitsträger"—bearers of National Socialist sovereignty. They are not forgotten in a day.

Should these men be let loose amongst the German people and amongst the people of Europe? Already the difficulties of this unhappy continent are overwhelming. Apart from those who come within the definition of these organizations, vast numbers of fanatical adherents of Nazidom must in any event remain at large. We have a whole generation of the German people who know no other ways than those prescribed for them by their Nazi rulers—young men and women whose first lessons were taught by Nazi teachers, whose education was had in Nazi schools, and whose sport and recreation were found in the military exercises of the SA. Are the leaders of Nazi Germany—in the shape of the members of these organizations—to be let loose to work their influence upon such fertile ground?

The law is a living thing. It is not rigid and unalterable. Its purpose is to serve mankind, and it must grow and change to meet the changing needs of society. The needs of Europe today have no parallel in history. Never before has the society of Europe faced the problem or the danger of having in their midst millions of ruthless, fanatical men, trained and educated in murder and racial hatred—

and in war. It is a situation which, were there or were there not precedents from the past, would justify, and indeed compel, unusual legal provision. In fact, as the Tribunal will remember from the speech of Mr. Justice Jackson, there are ample precedents for the proceedings which we are asking you to institute. If you are satisfied that these organizations as a whole are criminal, that the great majority of the members of these organizations knowingly and voluntarily supported the criminal policies and participated in the criminal activities of the leaders of the Nazi Party, then it is your duty under the Charter to declare them criminal. You may well think that your duty under the Charter is only commensurate with your duty to Germany, to Europe, and to the world.

The principle on which their condemnation is asked for is clear. It is a practical application of the sound theory of punishment which we learnt in our youth—from, among others, that great German thinker, Kant. If men use society merely as a means to their own ends, then society is justified in putting them outside society. The immensity of the problem does not excuse its nonsolution. The failure to perform this legal duty may well spell terror and racial persecution throughout a continent and, for the third time in our adult lives, world war.

The Court and the Prosecution have had the advantage of reading what is, if you will allow me to say so, a careful and learned argument from Dr. Klefisch. The criticism, however, which I should venture to make is that it is remote from the essential fact-finding function of this stage of the Trial. The first 30 pages are in reality an attack on Articles 9 and 10 of the Charter, and the conclusion which is drawn, that the Tribunal should use the word "may" in Article 9 as a basis for saying on a purely *a priori* reasoning that no organization can be criminal is, in our submission, to make nonsense of Articles 9 and 10, and to fly in the face of their connotation as well as their intent. In the succeeding parts of the argument Dr. Klefisch makes certain particular submissions to which attention might be drawn.

The question is posed by him to what extent in number, how, and by whom must crimes be committed in order to be imputed to the organization. To this we say that the practical answer presents no difficulties. No one can lay down categorically how many grains make a heap, but equally, no one can deny that he knows a heap when he sees one. Again, it is easy to decide on sensible grounds what crimes are within the general aims of the organization. The Prosecution not only accept but adopt the proposition that in the case of each organization certain crimes can be said to be typical and repetitive, and they draw attention to the number of such typical and repetitive crimes which occur in the evidence.

Similarly, no difficulty is found in the words "in connection with an individual defendant." To say that, if an individual defendant committed his crime in a capacity other than that of a member of the organization, Article 9 is not complied with, is to view this case in a nonexistent vacuum. It is the whole burden of the Prosecution's case that individuals and organizations are so interlocked that the common end of internal and external domination is omnipresent.

Equally, we strongly contest the suggestion that a number of members were not aware of the criminal purpose of the organizations. Let us once and for all tear down the artificial suggestion that large sections of the adherents to the Nazi Party were going about in blinkers. It is a travesty of the facts and an insult to their intelligence.

We agree with Dr. Klefisch that nonparticipation in crimes under Article 6 of the Charter and a lack of will to support the policies and activities of the organization are the preconditions of innocence. It is the basis of our whole submission that, to use Dr. Klefisch's own words, "The members were subordinate to, and worked continually for, the aims of the organizations and the Nazis."

THE PRESIDENT: Sir David, would it be convenient to break off there or do you want to go on a little further?

[The Tribunal adjourned until 29 August 1946 at 1000 hours.]

TWO HUNDRED AND FOURTEENTH DAY

Thursday, 29 August 1946

Morning Session

SIR DAVID MAXWELL-FYFE: If Your Lordship pleases, when the Court adjourned, I was dealing with some points in the memorandum of Dr. Klefisch, and I continue to deal with that document.

Much emphasis has been laid by Dr. Klefisch and by all defense counsel on the serious consequences which will accrue to the persons affected by a declaration of guilt, not only to those against whom subsequent proceedings may be taken, but to the others besides. It is said "that the stigma inflicted upon members of organizations declared criminal would... prove indelible.... Millions of members of organizations declared criminal would remain branded for the rest of their lives. One would point at them, saying, 'Look, there goes an SA criminal!'" But if they are guilty, if they have supported and assisted in a system which entailed throwing the world into war, reviving the horrors of slavery, persecution, and mass murder, ought they not to be so branded? This can be no injustice: It is less—far less—than their deserts. It is the only hope for Germany and the world that her people realize and repent their responsibility for what has happened. Dr. Servatius has asked you to excuse Ortsgruppenleiter because they are members of the lower middle class who lacked political experience. Can it really be that only the upper classes of the German people are able to recognize aggressive war for world domination, slavery, murder, and persecution, as crimes?

Yet there may be more truth in this than any dare to think. You have now seen and heard many witnesses who, some on their own admission, were themselves deeply involved in hideous crime. Have you been able to discern a sense of guilt or shame or repentance? Always it is someone who gave the orders that is to blame; never he who puts these orders into execution. Always it is some other agency of the State who was responsible; to support that State and co-operate with those other agencies is without criticism. If this is the mind of these people today, there can be no more pressing need nor greater justification for branding the guilty as criminal.

It is my intention to discuss the evidence in respect of these three organizations for which the British Delegation has taken

particular responsibility and which, in the considered submission of all the four prosecuting powers, are criminal. But before dealing with that evidence I trust the Tribunal will bear with me if I make one or two general observations upon the defense which has been put forward on behalf of all these organizations.

In view of the words of Dr. Böhm, I desire to submit that no one can say hereafter that every opportunity has not been afforded them for their defense. An elaborate procedure has been evolved to obtain and place before you their evidence. 102 witnesses have been heard before your Commissioners—witnesses selected by Defense Counsel from the many thousands of members of the organizations available. You have the transcripts of their evidence. Of these witnesses Defense Counsel have selected 20, who have given evidence in this Court and whom you have seen and heard yourselves. In addition to this oral testimony, you have also had submitted to you the substance of no less than 136,213 affidavits for the SS, 155,000 for the Political Leaders, 2,000 for the Gestapo, 10,000 for the SA and 7,000 for the SD, a total of 310,213. And you have also had presented before your Commissioners another 1,809 affidavits either in substance or in whole, the majority of which are now contained in the transcript of the Commissioners' proceedings.

On the face of it, the evidence which has been given by almost all the witnesses called before your Commissioners is untrue. You yourselves have seen and heard some of these witnesses, selected by Defense Counsel presumably because they were thought to be the most reliable and the ones most likely to impress you. Their evidence is no better.

You will remember Sievers, called for the SS, who denied knowledge of and participation in the experiments on human beings and was presented with a file of his own incriminating correspondence.

The witness Morgen described the variety theater, the cinema, the bookstalls, and the other amenities of Buchenwald. Dachau, he said, was a recreation camp.

Brill, who had served as an Obersturmbannführer in the SS Division Leibstandarte from June until August 1941 on the Eastern Front, knew nothing of the Einsatzgruppen, the slaughter of Jews in the Eastern territories, or of the treatment of the peoples of Poland and Russia taken into captivity for forced labor. Had the conditions in June become so changed from what they had been 2 months before, when Himmler had said to all the officers of that division:

> "Very frequently the members of the Waffen-SS think about the deportation of this people here. These thoughts

come to me today when watching the very difficult work out there performed by the Security Police, supported by your men, who help them a great deal., Exactly the same thing happened in Poland, in weather 40 degrees below zero, where we had to haul away thousands, tens of thousands, hundreds of thousands; where we had to have the toughness—you should hear this but also forget it again immediately—to shoot thousands of leading Poles" (1918-PS, US-304).

General Hauser, one time Commander of the SS Division "Das Reich," and subsequently commander of a corps, army, and army group, knew nothing of SS atrocities. He had never heard of the massacre of Lidice.

Gauleiter Hoffmann, who gave evidence before your Commission to explain away his order of 25 February 1945, encouraging the lynching of Allied pilots, said that the order "slipped out" from his command post after he had refused to issue the draft submitted to him by his staff officer.

Hupfauer, of the German Labor Front, supervising the work of that organization in Essen during the latter part of the war, and himself responsible for circulating Himmler's orders to ensure "the discipline and output of foreign workers," denied all knowledge of the brutal treatment of slave labor.

Rathcke, called for the SA, before your Commissioner described how "in the spring of 1933, the SA in all German localities streamed into the churches."

Schneider, another Political Leader called before your Commission, aged 55, denied having ever heard of the boycott of April 1933.

Best, the enslaver of Denmark, gave evidence before you for the Gestapo. Having seen the documents that were presented to him in cross-examination, can you believe one word of what he said? Examples of evidence of this kind could be quoted from the transcript of almost every witness that has been called to defend these organizations.

Consider this evidence from another angle. We know that so-called "demonstrations" were organized and carried out throughout the whole Reich against the Jews on the night of 9 to 10 November 1938, during the course of which 35 Jews were murdered, 20,000 seized and incarcerated for no other offense than that they were Jews; we know that 177 synagogues were destroyed by fire or demolished, that 7,500 stores were destroyed, and that the cost of damage to glass windows alone amounted to 6 million Reichsmark. Even the Supreme Party Court reported:

"The public, down to the last man, realizes that political drives like those of 9 November were organized and directed

by the Party, whether this is admitted or not. When all the synagogues burn down in the night, it must have been organized by the Party" (3063-PS, US-332).

"Whether this is admitted or not!" Can you find one single man among the 102 witnesses that have been called on behalf of the Party organizations who is prepared to admit it—or anything like it? Can you find one word of admission from among the affidavits that have been submitted by over 312,000 members of these Party organizations? If it was not the Political Leaders, if it was not the SA or the SS, if it was not the Gestapo or SD—what in the name of all common sense was it that organized and directed these demonstrations?

We know that slave labor was employed and brutally maltreated throughout Germany. We know that in 1943, it even became necessary—necessary only in order to increase production and for no reasons of humanity—to alter, I quote, "the hitherto prevailing treatment of Eastern Workers," and for the Party Chancellery and the RSHA to issue orders to all Political Leaders down to Ortsgruppenleiter, and presumably to all stations of the SD and Gestapo that "injustices, insults, trickery, mistreatments, *et cetera* must be discontinued. Punishment by beating is forbidden" (205-PS, GB-538).

But can you find one single one from all the 102 witnesses and the persons who have sworn affidavits on oath, who has ever seen or heard of the mistreatment of foreign laborers, save only in one or two exceptional instances?

The evidence of all of them is the same. They are asked if they knew of the persecution and annihilation of the Jews, of the dread work of the Gestapo, of the atrocities within the concentration camps, of the ill-treatment of slave labor, of the intention and preparation to wage aggressive war, of the murder of brave soldiers, sailors, and airmen. And they reply with "the everlasting No."

You may be reminded of the words of a great Irishman: "Falsehood has a perennial spring."

Let me turn to consider these three organizations for which I am responsible—the Corps of Political Leaders, the SA, and the SS.

With regard to the Corps of Political Leaders, certain general points have been made by counsel and witnesses for the Defense, which it is convenient to mention before dealing with the evidence. It is said that the Zellen- and Blockleiter ought not to be included as Political Leaders; that they were never regarded as such, and had no authority or political tasks; that they were subordinate to the staff officers in the Ortsgruppe whom the Prosecution has

agreed to exclude; that they were completely unimportant and in practice little more than the messenger boys of their Ortsgruppenleiter.

We submit that there is overwhelming evidence that this was not so. When you examine the evidence you find them implicated in criminal activities of many kinds. I would ask you particularly to bear this in mind—that it was the normal procedure in the Corps of Political Leaders to pass nothing in writing below the rank of Ortsgruppenleiter. The Organization Book of the Party prescribed, I quote:

> "In principle, the Blockleiter will settle his official business verbally, and he will receive messages verbally, and pass them on in the same way. Correspondence will only be used in cases of absolute necessity and practicality."

The witness Meyer-Wendeborn confirmed that this was so in practice:

> "Between the Blockleiter and the Zellenleiter on one side, and the Ortsgruppenleiter and the staff on the other, there was supposed to be no written instruction in order not to give these people of lower rank or lower position too much work."

In view of that, you may well think it remarkable that we have happened to find so many written documents as we have which directly implicate the Zellen- and Blockleiter. In dealing with the evidence I shall draw your attention to these documents. But I would also emphasize the other evidence you have of the vitally important role the Zellen- and Blockleiter played.

It has been argued that they were not Hoheitsträger, as the Prosecution suggest, and various documents have been submitted by the Defense Counsel to establish this contention. Be it right or wrong, it matters little. You will remember that they were included as Hoheitsträger in the Party's Organization Book, which states: "Among the Politische Leiter, the Hoheitsträger assume a special position."

It is answered that the Organization Book is inaccurate. The same is said of the *SA-Mann*—an equally inconvenient publication for the members of the SA. Is there any official publication issued by the official Party publishers which is accurate?

The fact is that by whatever title they may have been known, the Zellen- and Blockleiter formed the essential basis of the whole Party system. Gauleiter Kaufmann admitted:

> "Blockleiter and Zellenleiter were the executive organs of the Ortsgruppenleiter."

Zellenleiter Schneider was asked:

"Would you agree with me that without the Zellenleiter and Blockleiter, the Ortsgruppenleiter could never have carried on the tasks they had to perform?"

and answered:

"Yes, that is correct."

They were much more than the messenger boys they are now made out to have been. Hirt stated that only persons who were "completely politically reliable" were appointed either as staff officers in the Gaue, Kreise, and Orte or as Zellen- and Blockleiter, and that the people who held the positions of Zellen- and Blockleiter appeared to be supporters of the Nazi Party. The evidence shows the kind of tasks with which they were entrusted, which included the responsibility of "assisting in forming the political judgment" on the members of their area.

It has been suggested that Political Leaders—particularly in war time—were compelled against their will to assume their appointments. But the whole basis of the system was voluntary service, paid or unpaid, and it is confirmed by their own witness Meyer-Wendeborn. Let me quote from his cross-examination before the Commission:

"Question: 'May I take it that Political Leaders were all voluntarily occupying their offices?'

"Answer: 'Yes.'

"Question: 'And that also applies, does it not, to the Zellenleiter and Blockleiter?'

"Answer: 'The Zellenleiter and Blockleiter were appointed through the Ortsgruppenleiter after he had had a discussion with the staff. However, if a person considered himself not up to the part, or that he was unable to do the job, or that he did not have the time, we looked for another one.'

"Question: 'And it was decidedly voluntary on the part of the Zellenleiter or Blockleiter whether or not they accepted the position?'

"Answer: 'Yes.' "

If pressure was brought to bear on some, as the witness Hirt suggested, it could only have happened in the most exceptional cases. If the holders of these offices were required to be "completely politically reliable" it would be remarkable to find among them many opponents of the Party forced unwillingly to act.

It is said also that because, as in peace time, their appointments were not confirmed, their oath taken only at irregular intervals, and because they were given no uniform they were not, in the words

of the Indictment, "according to common Nazi terminology Politische Leiter of any grade or rank."

I submit that there can be no substance in such an argument. They performed the same tasks, were regarded as the same officials and held the same authority and influence as those whom they replaced.

Again, it is suggested that there was no "Corps" or organization of Political Leaders; but the evidence shows that Politische Leiter of all classes formed a close and well-defined corps. They are described as a "Corps" in the Organization Book. Together they had a common purpose, I quote, "the complete penetration of the German nation with the National Socialist spirit."

They wore a common uniform. They were issued with a common identity card—common to themselves but distinct from the rest of the population. Yearly they took their common oath to their Führer:

> "I pledge eternal allegiance to Adolf Hitler. I pledge unconditional obedience to him and the leaders appointed by him."

And, as the Organization Book says of each one of them:

> "The Political Leader is inseparably tied to the ideology and the organization of the NSDAP."

There is one further matter upon which I ought to say a word of explanation. It has been argued by the Defense that a great number of the Amtsleiter on the staffs of the various Hoheitsträger ought not to be included in any declaration of criminality that you make against the Corps of Political Leaders. In the same way as the Blockleiter were said to be innocent, harmless messenger boys, so, too, it is said that these Amtsleiter were harmless and innocent expert advisers to their repective Gau-, Kreis-, or Ortsgruppenleiter. They may have been expert advisers, but they were much more besides, and they certainly were neither innocent nor harmless. They were properly appointed Political Leaders—persons who were "completely politically reliable" and supporters of the Nazi Party. All of them, just as the Hoheitsträger themselves, took their annual oath of allegiance binding them in blind obedience to their Führer. All of them, although they naturally received their instructions concerning their particular fields of activity from the State Department to which they belonged, nevertheless were subject to the orders of their Hoheitsträger upon all political matters and in all matters of Party discipline. You may think that these men exercised as dangerous an influence as any other Political Leader because between them they were in closest contact with all grades

of society and with all professions and trades. We have not documents directly implicating every class of these so-called nonpolitical Political Leaders, but a great many are directly involved by the documents you have seen. I will not enumerate them now. I shall draw your attention to them as I discuss the evidence. It is the submission of the Prosecution that from that evidence, and from the general evidence of the conditions in Germany and of the influence of the Political Leaders, you are entitled and, indeed, compelled to draw the inference that if the purpose and activity of that organization was criminal, then every member of the staffs of the Gau, Kreis, and Ortsgruppen ought to be included. Let it not be thought that because we have all deliberately excluded those members of the Ortsgruppenleiter staffs, we have done so on account of their innocence. That decision was taken for practical rather than any other reasons, and it may well be that that decision was wrong.

It has been suggested by the Defense that there were officers in the various Party organizations such as the DAF, NSV, labor welfare, students' and womens' organizations who were also known as Politische Leiter. Their numbers are given as one and a half million. Let me once again make it clear that if such Political Leaders existed the Prosecution do not seek a declaration of criminality against them. We include only Reichsleiter, Gauleiter, Kreisleiter, Ortsgruppenleiter, Zellenleiter, and Blockleiter and the Amtsleiter or heads of offices on the staffs of the Reichsleitung, Gauleitung, and Kreisleitung—those Political Leaders who, organized on a geographical basis, were responsible for the political control of the people and the execution and administration of Nazi policy. All others are excluded.

You have had a schedule showing the numbers that are thus involved. According to the Party Organization Book for 1943 they number 600,000. It is said by the Defense that that figure allows for no replacements and that the total figure of all who have at any time held these positions is much greater. Upon that I make two points. First, the figures given in the Organization Book show the maximum establishment allowed for each Gau and Kreis. In practice not all these offices were filled—in urban districts there would be no agricultural Amt; in Gaue where there were no universities there would be no political Amtsleiter for university teachers. Secondly, the 1943 figure of 600,000 includes the Political Leaders of nine foreign Gau—six Austrian, two Polish and one in the Sudetenland—none of which had existed before 1938, so that during the first 5 years of the Nazi regime the total possible number of Political Leaders must have been considerably less than 600,000. The extract submitted by the Defense from the pamphlet *Der Hoheitsträger* illustrates the increase which took place in the Hoheitsträger alone between 1935 and 1939: the figure rose from

291,671 to 581,650. In view of these considerations it is submitted that, allowing for replacements, the total number of persons who at any time held those positions in the Corps of Political Leaders which we include for the purposes of a declaration of criminality, cannot have greatly exceeded the figure of 600,000 which we have submitted. And I add that ample allowance must be made for decease, not only through natural causes, but through active service and bombings. It was these men and women who constituted the very core of the National Socialism which led the 48 million voters of Germany in the way and to the end which we have seen.

Let us consider the evidence against them under its main headings. We will see not only how they themselves directly participated in crime, but also how they actively and knowingly assisted and co-operated with the other organizations in the execution of their common criminal purpose.

With regard to the control of the State, Bormann, writing to the Gauleiter in June 1941, stated: "For the first time in German history the Führer consciously and completely has the leadership of the people in his own hand..." (D-75, USA-348).

We see one of the ways in which the Leadership Corps assisted in putting the leadership of the people into the Führer's own hand from the evidence of the Political Leaders' activity during the voting in 1936 and 1938, and we see here the participation of all ranks of Political Leaders.

We have a complete file from the Kreis of Erfurt, Thuringia, in connection with the plebiscite of 1938. Stützpunktleiter were to report beforehand all persons in their district whom they might assume with certainty would vote "no" (D-897, GB-541). The orders were issued by the SD jointly to the Stützpunktleiter and to all heads of sections of the Security Service. The heads of sections were to support the Stützpunktleiter locally as much as possible. It was said by the Defense that the Stützpunktleiter referred to in that file were Stützpunktleiter of the SD and not of the Political Leadership. Even if you accept that explanation it makes no difference, for it was expressly stated that the whole matter was to be "carried out in the closest collaboration with the Ortsgruppenleiter of the Party" (D-897, GB-541). The Political Leaders could hardly have had any doubts as to what was in store for the people whom they reported when the orders contain the significant paragraph:

> "The tremendous responsibility which the Stützpunktleiter have, in particular with regard to this report, is stressed once more. The Stützpunktleiter must clearly understand the potential consequences for the persons contained in their report."

The Tribunal will remember the reports that were rendered by the SD after the plebiscite had taken place, showing the means by which the voting papers of suspected persons were checked by the use of skimmed milk and colorless typewriters. You will remember also the methods employed to force doubtful supporters of the Party to vote, I quote:

"The wife of the Jew Bielschowski, who was dragged along just before closing time, voted 'no,' as can be proved.

"The laborer Otto Wiegand had to be requested four times to record his vote on the day of the election and finally only voted under force....

"The husband... recorded his vote. To be sure this was probably exclusively for fear of renewed arrest" (D-902).

And yet again in what must be, perhaps, one of the most dreadful documents in all this Trial:

"The Jehovah's witness Robert Siering and his wife... deposited their vote after both had been advised of their duty to vote by the police in Griefstedt and had been threatened with the removal of their child in case of non-participation" (D-897).

No one can pretend that these things were happening only in Erfurt. In the Gau Coblenz the Kreisgeschäftsführer of Kochem, "where supervisory control was ordered in several Ortsgruppen," assured the SD that it was mostly women who voted "no" or invalidly (R-142, USA-481).

In Rothenburg the Party carried out demonstrations against the Bishop who had refused to vote, demonstrations which Mr. Justice Jackson so vividly described in his opening speech.

Nor was it only in the 1938 plebiscite that the Political Leadership was active. It will be remembered that in Bremen Kreisleiter, Ortsgruppenleiter, and Stützpunktleiter were concerned in reporting all civil servants who did not vote in the election which took place on 29 March 1936.

Dr. Servatius brushes this evidence aside with a comment for which there is no scrap of evidence in support. He says:

"It is shown that the commanding agency of the Party in no way enters into action. These are merely individual measures of other agencies. No general practice or knowledge can be deduced from that."

It is unnecessary for me to say more.

The control and supervision of the German people was as much the task of the Political Leaders as of the SD and Gestapo. Of all the Political Leaders the Blockleiter were the most essential for this

purpose. They kept their index cards of every householder, index cards which formed the basis of the "political judgment," which the Blockleiter, Zellenleiter, and Ortsgruppenleiter, in co-operation with each other, were to pronounce (D-901 A, GB-546). Again and again the Defense, both before the Commission and before the Tribunal, have bridled at and denied the suggestion that Blockleiter were used as spies. But what else were they when their index cards were to be completed from information which they would, I quote: "have sufficient opportunity... to obtain by means of conversations... with the Germans"? They too were urged to make certain of the accuracy of their reports (D-901 A, GB-546).

There is other evidence to show this wretched role the Blockleiter played. In the Party Organization Book the Blockleiter is directed that:

> "It is his duty to find people disseminating damaging rumors and to report them to the Ortsgruppe so that they may be reported to the respective State authorities" (1893-PS, USA-323).

We see him spying again when we review the evidence of the part played by Political Leaders in the persecution of the Churches. In co-operation with the Gestapo and the SD the Political Leaders, from the highest to the lowest, took active part in suppressing the influence of the Churches.

Your Lordship, I think I can omit the rest of Page 17 and the first 8 lines of Page 18, which deals with Bormann's decree, which is well known to the Tribunal, and I can go on at the words on Page 18.

How can we doubt that it was the generally accepted policy of all Political Leaders when, whatever Hitler may have said in the Party Program about a "positive Christianity," Bormann was writing to the Gauleiter in 1941 after his notorious denunciation of Christianity:

"National Socialist and Christian concepts are irreconcilable."

Gauleiter Kaufmann was at pains to explain that that directive had been withdrawn a week later. But there is no mention of such withdrawal in the letter from the SD concerning it, written 6 months later in December 1941. And you may think that it is remarkably similar to the policy of the Führer's Deputy Hess, as it was explained to Rosenberg 2 months earlier in April 1941:

> "We are inducing schools more and more to reduce and abolish religious morning services. Similarly the confessional and general prayers in several parts of the Reich have already been replaced by National Socialist mottoes."

There is abundant other evidence of the policy being pursued by the higher ranks of the Political Leaders in regard to the Church, with which I need not worry the Tribunal.

Let me confine myself to the lowest ranks, the Ortsgruppenleiter, Blockleiter, and Zellenleiter. You will remember the file of reports for February 1939 of the Ortsgruppenleiter in Darmstadt on ecclesiastical questions.

"Blockleiter and Party member Kiel informs me . . . that meetings of the Confessional Front . . . are again taking place" (D-901, GB-536).

And another in connection with a Pastor Strack:

"This gentleman should really be rapped on the knuckles seriously for once."

You will remember also the action taken by the Kreisleiter on these reports. The SD and the Gestapo were informed about the Confessional Front meetings reported by the Blockleiter. So also was the unfortunate Pastor Strack, the priest who was "sufficiently well known and ripe for the concentration camp or special court."

Can you doubt that it was also the Blockleiter and Zellenleiter in Thuringia who would have to make the reports required on the way in which the results of the 1938 plebiscite were received by the people "particularly in small towns and villages"? (D-897).

Who else but Blockleiter and Zellenleiter could be employed to find out what the Catholic and Protestant clergy were saying about the Anschluss during their services? Who else but they were in a position to report whether the church bells were rung in the evening after the Anschluss speech in Vienna? (D-897).

Lastly, upon this subject you have the evidence of demonstrations being organized to disrupt the service in Freising Church in 1935, in which the Kreisleiterin of the Nazi Party women's organization was taking a leading part (1507-PS, GB-535).

It was only by acquiring complete control of the State and of the people that the Nazi Government were enabled to carry out their criminal aims. The Political Leaders were an essential element in the acquisition of this control. They supported and executed the orders of a Government which they knew from the first pursued policies which were wrong by methods which were criminal. All knew of their avowed purpose to persecute the Jews. All knew of the Gestapo, the concentration camps, and the Nazi practice of arrest and incarceration without trial. Yet they continued actively to support that Government and to tighten its stranglehold upon the German people. The whole of Dr. Servatius' argument as to the position of the Political Leaders after 1933 shows the grip in which Germany was held by the iron framework of the Party—a political "Iron Maiden" squeezing a people to their death.

With regard to the Jews, when the persecution of the Jews was an openly recognized policy and practice of the Nazi Party, the fact that men voluntarily served their Party in an executive position is in itself sufficient to prove their participation in criminal activity. But we have concrete evidence of the direct participation in the persecution of the Jews by Political Leaders—and again by Political Leaders of all ranks. Within less than a year of the Nazi

Government coming to power there is evidence that the Corps of Political Leaders were inciting the people of Germany to persecute the Jews. It is hardly possible to imagine that in a civilized State in the year 1933 instructions should be issued to the Political Leaders under the title "Jew Baiting." Yet that was happening. Kreisleiter in the Gau Coblenz were to check lists of Jewish firms and businesses in their district. Once again the importance of accuracy is emphasized. Committees were to be set up within the various Kreise, Ortsgruppen, and Stützpunkte which had, I quote, "the task of directing and supervising the communities" in Jew baiting (374-PS). They were to continue the policy which had been inaugurated by the Party with the boycott in April of that year. I quote:

> "The Kreisleiter will point out in all gatherings of members or in all public gatherings that the Jew in all countries is again carrying out a low attack which is greatly harmful to Germany. It must be made clear to the masses that no German may buy from a Jew" (374-PS).

In view of this evidence; in view of Dr. Servatius' admission that there was no objection on the part of the Political Leaders to the Nuremberg Decrees, and that they welcomed measures which tended to restrict the influence of the Jews; in view of the part we know they played in the 1938 demonstrations—can there be any doubt that throughout these years they were actively participating in the continuous slander and persecution of the Jewish people? It would be strange indeed if it were not so, when we see Heydrich's order to the SD issued on the night of 9 to 10 November 1938:

> "The Chiefs of the State Police Offices or their deputies must immediately get in telephonic contact with the Political Leaders—Gauleitung or Kreisleitung—who have jurisdiction over their districts and arrange a joint meeting with the appropriate inspector or commander of the Ordnungspolizei to discuss the organization of the demonstration. At these discussions the Political Leaders will be informed that the German Police have received from the Reichsführer SS and Chief of the German Police the following instructions, in accordance with which the Political Leaders should adjust their own measures" (351-PS, USA-240).

It is indeed curious that these instructions should have been issued if all the Gauleiter had been so strongly opposed to such measures as Gauleiter Kaufmann, Streicher, Sauckel, and Wahl say that they were.

Whatever these witnesses you have heard may say of the attitude of the Political Leaders at these demonstrations, we know that 36 Jews were killed (358-PS, USA-508). Of those 36 killed, 4 were murdered either by Ortsgruppenleiter or Blockleiter. It was a court

composed of Gauleiter and other Political Leaders who saw fit to suspend or pronounce only minor punishments in the case of all the murders committed during these demonstrations by members of the Party, the SS, the SA, and of the Corps of Political Leaders. And for what reasons? I quote:

> "In such cases as when Jews were killed without an order or contrary to orders, ignoble motives could not be determined. At heart the men were convinced that they had done a service to their Führer and to the Party" (3063-PS, USA-332).

If these witnesses for the Defense that you have heard here did not understand who was responsible for these demonstrations, it was perfectly clear to the members of the Supreme Party Court.

In France lists of Jews for "collective expatriation"—which meant, of course, deportation to the East—were made out in agreement with the Hoheitsträger (EC-265, RF-1504). But knowledge of these deportations and of the treatment of Jews in the occupied territories was not confined to the Political Leaders in France. The August 1944 edition of the information circular, *Die Lage,* contained exact particulars of what was happening in Hungary. I quote:

> "It was a matter of course that the German offices in Hungary did everything possible after 19 March to eliminate the Jewish element as rapidly and as completely as was at all possible. In view of the proximity of the Russian front, they commenced with the cleaning up of the Northeastern area (Northern Transylvania and Carpathian territory) where the Jewish element was the strongest numerically. Then the Jews were collected in the remaining Hungarian provinces and transported to Germany or German-controlled territories.... 100,000 Jews remained in the hands of the Hungarians to be employed in labor battalions. By the appointed day, 19 July, the Hungarian province was without any Jew. Here remarkable consistency and severity were used in the shortest possible time" (D 908, GB-534).

We do not know who received copies of that paper, but we do know that the Defendant Dönitz contributed and that Gauleiter Kaufmann "might have received it." Moreover, it appears from what has been written on the copy we possess that that copy found its way to the NSDAP in the village of Höchen near Aachen. Dönitz must have known what it contained; so must every other high-ranking Nazi official. Did Kaufmann and all his fellow Gauleiter know nothing of this hideous policy that their Government was pursuing? They say so, but they lie. Will you look at Document 49 of the document book which has been submitted in defense of the Corps of Political Leaders? It is a confidential information bulletin issued by the Nazi Party from the Party Chancellery on 9 October

1942. It deals with the preparatory measures for the final solution of the Jewish question in Europe and rumors concerning the conditions of the Jews in the East. It is a document which bears in the margin the remark "Open only for G and K," which may mean for Gau and Kreis. But it shows beyond all question that knowledge of these things went far below Kreis. Listen to what it says:

> "While the final solution of the Jewish question is being worked out, discussions are lately going on among the population of various parts of the Reich territory concerning 'very severe measures' against the Jews, particularly those in the Eastern territories. Investigations have shown that such statements—mostly in distorted or exaggerated form—were passed on by men on leave from various armies employed in the East who personally had the opportunity to observe such measures."

You may think after what you have heard that it was not possible to exaggerate the "very severe measures" which the soldiers on leave from the East were discussing—and must have been discussing ever since September 1941 in every village and homestead throughout Germany. But even if they were exaggerated they are not denied. The article, which I append as a footnote, makes five main points:

> "a) The measures carried out up to that date, namely, elimination of Jews from the various walks of the German people, and expelling the Jews completely from Reich territory, were no longer possible by emigration.

> "b) The next generation will no longer consider this question as so vital. Therefore the problem must be solved by this generation.

> "c) The complete segregation and elimination of the millions of Jews residing in the European economic sphere remains a compelling necessity in the German people's struggle for existence.

> "d) Starting with the Reich territory and then going over to the other European countries included in the final solution, the Jews will in a steady plan be shipped to the East into large camps . . . from where they will be either used for labor or sent still further to the East.

> "e) These very difficult problems will only be solved with ruthless severity."

If they still deny knowledge of the real fate that awaited these Jews, not one of these defendants, not one of the witnesses who have given evidence before you or before your Commissioners, not one of the members of these organizations can deny knowledge of

their deportation. And what could they have thought was the meaning of the phrase: "Their complete elimination is no longer possible by emigration"?

On the mildest interpretation, this treatment of Jews in occupied territory is a war crime. The Leadership Corps is being mobilized to ensure that public opinion will not only condone, but support and encourage this war crime. If there were nothing else, this would stamp it as criminal.

But it does not stop there.

In the occupied territories the Corps of Political Leaders were as responsible as any others for the crimes committed against the local population. Frick on 16 December 1941, in giving Rainer his instructions on his appointment as Gauleiter of Carinthia, urged him in the strongest terms to germanize the Slovenes in the incorporated territory and eradicate the Slovenic language (USSR-449). My Lord, we strongly contest the suggestion of Dr. Servatius that it was admissible to germanize former German nations. The claim to germanize any Slav who was held in the old Empire has only to be stated, we submit, for its preposterous character to be seen.

Gauleiter by themselves could not execute such orders. Their subordinates had to play their part. You will remember the instructions of 30 April 1942, issued by the Kreisleiter in Pettau to all Ortsgruppenleiter, for the removal of all Slovenian inscriptions from all religious and lay sites (USSR-143).

We know that the business discussed at the Gauleiter Staff Conference at Marburg included the transfer to Serbia of 2,000, the placing of hundreds in concentration camps, and retaliatory shootings. In June of 1942, when the subject was the evacuation of the prison of Cilli, it is stated that the prisoners were to be transferred or shot to create the necessary space for a large-scale operation. On 13 July half of the 400 arrested are to be rendered harmless through delivery to a concentration camp or shooting. A similar incident, including this time the shooting of a priest, is told in the minutes for March.

In Poland, too, the Political Leaders are co-operating in the appalling treatment of the local people. A letter from the Reich Security Headquarters in November 1942 to the directors of the SD Sections informs them of the iniquitous agreement between Himmler and Thierack by which a trial is to be denied to Poles, Eastern Nationals, Jews, and Gypsies (US-346). It is based on the impudent theory that they are inferior people living in the German Reich's territory. What is interesting in this argument is that there is to be no hesitation in informing the Gauleiter. What possible need could there be to inform the latter unless it was that his assistance and co-operation might be required?

I pass to consider the evidence in connection with slave labor, which shows perhaps more clearly than the evidence we have in respect of any other particular crime, how deeply every branch of the Corps of Political Leaders was involved. Every witness that has been called by the Defense has denied all knowledge of or participation in the mistreatment of foreign laborers; but what is such evidence worth when you consider the documents which have been presented? The treatment of Polish agricultural workers, for whose care the Bauernführer on the staffs of the Gau-, Kreis-, and Ortsgruppenleiter were particularly responsible, can be seen from the instructions issued to the Kreisbauernschaften in Karlsruhe in March 1941. They were instructions which were issued as a result of negotiations between the State Peasant Association of Baden and the Higher SS and Police Leader in Stuttgart, and they were received with, I quote, "great satisfaction." The Polish laborer was no longer to have any right to complain. He was prohibited transport, entertainment, and religious worship; he was forbidden to change his employment; there were to be no time limits to his working hours. I quote:

> "Every employer has the right to give corporal punishment to farm workers of Polish nationality.... The employer may not be held accountable in any such case by an official agency. Farm workers of Polish nationality should, if possible, be removed from the community of the home and can be quartered in stables, *et cetera*. No remorse whatever should restrict such action" (EC-68, USA-205).

We ask: can it really be possible that instructions of that nature were issued in Karlsruhe and nowhere else? Is it possible that while the Poles in Baden were being treated like animals, in the next-door Gau they were being accepted as members of the family? This is the evidence of the witness Mohr, called on behalf of the Bauernführer before the Commission. I quote:

> "In practically all cases, I think with very few exceptions, the foreign laborer was accepted in the farmer's family unit. He ate with the family and moved around in the circle of the farmer's family."

In the industrial areas the responsibility for the care of foreign workers was in the hands of the DAF (Labor Front) Political Leaders. Sauckel had decreed in March 1942:

> "The food supply for the industrial workers in transit within the Reich is the duty of the DAF.... The care for the foreign workers employed in the Reich will be carried out... by the DAF in the case of non-farm laborers... All camps with foreign non-agrarian workers, regardless of who furnishes or maintains the camps, will be cared for by the DAF.... In

the German Gaue, the Gauleiter will have the rights of inspection and control of the execution of these orders" (3044-PS, US-206).

It is unnecessary to remind you of the appalling conditions in which the workers of Essen barely existed (D-382, US-897). Once again I ask: is it possible that the Gauleiter, Kreisleiter, Ortsgruppenleiter, Zellen- and Blockleiter, and the Political Leaders of the DAF in Essen were unaware of these conditions, when the hutments in which the workers lived and the punishment cells in which they were confined and tortured are situated, as the photographs show, in the very grounds of the Krupp foundries and workshops, with the works railway running within a few feet of their doors, and with the Krupp cranes stretching almost above their roofs?

It is said that if indeed any such conditions did exist in Essen, they were exceptional and due only to the chaos caused by Allied bombing. But it is not so. Before the bombing of Essen had started, the office chief of Krupp's Locomotive Construction Works was complaining that

"the people came in the morning without bread and tools. During both breaks the prisoners of war crept up to the German workers and begged for bread, pitifully pointing out their hunger." (D-361, US-893).

He went to the kitchens to try and find them food:

"Since a few Russians had collapsed already, I telephoned Fräulein Block and asked for an increase in the food as the special ration had ceased from the second day onwards. As my telephone conversations were unsuccessful, I again visited Fräulein Block personally. Fräulein Block refused in a very abrupt manner to give any further special ration."

Fräulein Block did not let the matter rest there. She reported it to the DAF, who requested Krupp's office chief to go and see them. The DAF representative

"accused me, gesticulating in a very insulting manner, saying that I had taken the part of the Bolsheviks in too apparent a way. He referred to the law paragraphs of the Reich Government which spoke against it.... I then tried to make it clear with special emphasis that the Russian prisoners of war were assigned to us as workers and not as Bolsheviks. The people were starved and were not in a position to perform the heavy work in boiler-making which they were supposed to do."

My Lord, I have stated, and Your Lordship can see, the full story of how the manager tried to get bread for his workers, and I ask Your Lordship to pass on to the top of Page 29 and just look at the last sentence of the quotation; the last is typical of all I have said. The last two sentences of that paragraph:

"Sick people are a liability to us and not a help to production. To this remark Herr Prior stated that if one was worth nothing then another was, that the Bolsheviks were soulless people, and if 100,000 of them died, another 100,000 would replace them" (D-361, USA-893).

Nor can it be true that these conditions and this treatment were confined only to Essen. In March 1943 Goebbels found it necessary to hold a conference on the question of increasing production. The minutes of that conference report:

> "The hitherto prevailing treatment of the Eastern Workers has led not only to diminished production but has also most disadvantageously influenced the political orientation of the people in conquered Eastern territories and has resulted in the well-known difficulties for our troops.... The treatment of foreigners which, until now, was markedly different for subjects of Western and Eastern countries, will be put on a uniform basis as much as possible, particularly the living standards of the Eastern Workers will be raised" (315-PS, GB-537).

We see from these minutes the attitude of the Party Chancellery—the Party Chancellery from which the Corps of Political Leaders received their orders. Its representative—I quote:

> "pointed out the controversies which are already appearing and which would result for the German population if more freedom were granted for the foreigners" (315-PS).

But the need for increased war production was all-important and, notwithstanding the fears his representative had expressed at the meeting in March, on 5 May 1943 Bormann issued from the Party Chancellery a memorandum to all Reichsleiter, Gauleiter, Verbandsführer, Kreisleiter and Ortsgruppenleiter. They were instructed that the treatment of foreign laborers should become more humane, although at the same time it was

> "demanded by members of the German race that they observe the difference between themselves and foreign nationals as a patriotic duty.... Injustices, insults, trickery, mistreatment, and so forth must be discontinued. Punishment by beating is forbidden" (205-PS).

Does not that document illustrate the utter lie that every one of these witnesses for the Defense has told? Does it not show more clearly than any other document the savage brutality with which the Political Leaders of the National Socialist Party were encouraging the people of Germany? Is it not almost beyond our comprehension that in these days of enlightenment in a great and civilized country orders should have been necessary from the Government to its Political Leaders to discontinue the mistreatment of men and women that they had deported into slavery? I pass on to the next paragraph.

Lastly, upon this aspect of the case, you will remember the instructions issued by the Gauamtsleiter from Strasbourg in the Gau Baden-Alsace. Foreign women workers induced to sexual

intercourse by Germans were to be taken temporarily into protective custody and then sent to another place of work. "In other cases the foreign female worker will be sent to a concentration camp for women" (D-884A). Their children, if they were racially satisfactory and hereditarily healthy, were to be seized from them immediately after birth to "go to homes for foreign children to be looked after by the National Socialist welfare organization."

The provisions of that order do little more than add a detail to the evidence we already have of the callous brutality which was prescribed by the Party for the treatment of foreign workers. But it is an important document because it shows how many branches of the Political Leaders were involved in this trafficking in slaves. Kreisleiter and the Kreisobmann of the German Labor Front were to report cases of pregnancy. In fact, as one might expect, it was the Ortsgruppenleiter that made the necessary enquiries. As well as to the DAF and NSV, the order was circulated to the Gau Propaganda Leiter, the Gau Press Leiter, the Gauamtsleiter for Racial Policy, for National Health, for Peasantry, for National Welfare, for Questions of Race, the Gau Political Leader of the National Socialist women's organization, and to similar staff officers on the Kreisleiters' staff. It is perhaps worth noting the action—or as it might more accurately be described, as a lack of action—which the National Socialist welfare organization took . . .

THE PRESIDENT *[Interposing]*: Sir David, could you tell us what the word "Kreisobmann" means?

SIR DAVID MAXWELL-FYFE: It is the representative of the Labor Front on the Kreisleiter Staff, Sir.

THE PRESIDENT: Go on.

SIR DAVID MAXWELL-FYFE: I quote:

> "As far as I can find out up to now"—reports the Kreisleiter of Villingen—"there have been about 21 pregnancies; of these four abortions are said to have been carried out, during which two of the women died. Of the remaining 17 births, five were still-born. Welfare by the NSV has not taken place anywhere" (D-884A).

You see again the Corps of Political Leaders working hand in hand with the Security Police and the SD and the Reich Commissar for the Consolidation of the German Race, another institution over which Himmler reigned supreme.

On this subject it would almost be enough to say: It is admitted by Dr. Servatius that the Political Leaders knew that the majority of the workers were forced. It is admitted that they supervised the condition of that labor. Thereafter *res ipsa loquitur.*

Now the Attorney General has already addressed you upon the vast scale on which the murder of sick and aged persons was carried out. That "action" commenced some time in the summer of 1940, but long before, in pursuance of their racial policy, the Nazi Government were taking steps to improve the German race. One document we have, dated January 1937, is illuminating upon the part the Political Leaders were expected to take. It is a letter from the Gauleiter of Southern Westfalen setting out Hess's decree of 14 January 1937—I add: the eugenics—given by him and appropriated for the Party record; no other words can describe it; here is the quotation:

> "The question whether the person is an imbecile cannot be ascertained solely by carrying out an intelligence test, but requires detailed evaluation of the whole personality of the human being. This review shall not only take into consideration the knowledge and intellectual abilities of the supposed imbecile, but also his ethical, moral, and political attitude. A number of civil service doctors have, up to date, attached little importance to the reviewing of the personality as a whole. They have, up to now, hardly ever called for or used information regarding the political conduct of the supposed patient. Now that the Party, by virtue of the decree of the Reich and Prussian Minister of the Interior, is consulted in the proceedings on matters of hereditary diseases against Party members, it is the task of all Gauleiter to ascertain that the law regarding hereditary health will in future be used in the sense in which it was designed.... He must investigate whether the person about to be sterilized has achieved very outstanding merits for the National Socialist Movement. If the Gauleiter reaches this conviction and feels that he must use his influence to prevent the sterilization, he will report to this department" (D-181, GB-528).

It needs little imagination to see the abuses to which a decree such as this might be put, abuses which might well prove a convenient weapon for the Nazi Party. That letter from a Gauleiter went to all Gauamtsleiter, Gau Inspectors, and Kreisleiter in his Gau. From the fact that it is stated that the Department for National Health was to carry out preparations for cases to be put before the Gauleiter, it is clear that the Amtsleiter for that Department of National Health were also closely involved.

My Lord, I have then collected the evidence on euthanasia, as the Tribunal was addressed by the Attorney General and the evidence was being called to their attention by my learned friend Colonel Griffith-Jones.

May I summarize what the pages contain in the interest of time? My Lord, the remainder of Pages 32 and 33 show the

Church opposition to euthanasia and the Party support, and the addition at the foot of Page 33, and from there Pages 33a and 34 deal with the question of whether euthanasia is a war crime, and show the evidence that it was deliberately used in order to organize the population for war and restrict the number of useless mouths in the country during the war.

You will remember the evidence of the extent to which mercy killing became general knowledge within a few months of its commencement.

By July 1940 Bishop Wurm was writing to Frick. In August he was writing to the Minister of Justice. In September, having attained no satisfaction, he was writing again both to Frick and to the Minister of Justice. Bishop Wurm was talking about events in Württemberg. They were not confined to Württemberg, to Stuttgart, and Naumburg. Several hundred miles away the same thing was happening in Stettin, as the letters of the Stettin supervisor to the Ministry of Justice and to Lammers of 6 September 1940 (M-151, GB-529), and Lammers' letter to the Minister of Justice of 2 October 1940 (M-621, 715-PS) indicate. By August of next year the same thing was happening around Wiesbaden, as we see from the Bishop of Limburg's letter (615-PS, USA-717) to Frick, the Minister of Justice, and the Minister for Church Affairs. It was happening in Franconia also, and we happen to have a file which shows the part the Political Leaders of Franconia were taking. Can one doubt, when one reads those letters, that the same thing must have been happening in every other area in Germany where these murderous commissions were at work? Bormann writes to the Gauleiter of Franconia and one of his Kreisleiter on 24 September 1940:

> "It is natural that the representatives of Christian ideology speak against the Commission's measures: It must be equally natural that all Party offices should, as far as necessary, support the work of the Commission" (D-906).

How can Dr. Servatius say of this evidence that it shows the Political Leaders had no part in the carrying out of these measures and that they had no knowledge of them? That one sentence from Bormann's letter is alone sufficient to justify a declaration of criminality against the Corps of Political Leaders, the corps which provided the heads of the Party offices which were to support those commissions.

It was questioned during the cross-examination of the Defense witnesses for the Corps of Political Leaders as to whether this crime of euthanasia came within the jurisdiction of this Tribunal under Paragraph 6 of the Charter. Surely there can be no serious doubt that the murder of 270,000 persons is a crime against humanity. 270,000 corpses may pale into insignificance beside the slaughter in the occupied territories and the concentration camps; it is, nevertheless, a crime of almost unimaginable proportions. Neither can there be any doubt that it was a crime committed in connection with aggressive war. From Bishop Wurm's letter to Frick on 19 July 1940 (M-152, GB-530) we learn that these murders were taking place on the orders of the Reich Defense Council. Göring, Keitel, Frick, Raeder, Funk, Hess, and Ribbentrop were members of the Reich Defense Council. When the Bishop wrote again on 5 September 1940, he stated:

> "If the leadership of the State is convinced that it is a question of an inevitable war measure, why does it not issue a decree with legal force?" (M-152, GB-530).

The purpose of these crimes is clear, as it was clear to the Catholic population of Absberg whom the Ortsgruppenleiter reported as asserting:

> "The State must be in a bad way now or it could not happen that these poor people should simply be sent to their death solely in order that the means which until now have been used for the upkeep of these people may be made available for the prosecution of the war" (D-906).

I merely remind the Tribunal in the shortest terms of Bormann's remarks as to similarly worded letters to various families; of the Gaustabsamtsleiter of Nuremberg demanding notification in a more clever form when 30,000 had been

dispatched and four times as many were waiting; of the doubts of the Kreisleiter of Erlangen; of the grave difficulties as to notification which faced the Kreisleiter of Ansbach. Neither the Kreisleiter nor any of the others appear to have felt any concern at the fact that they themselves were actively supporting an administration conducting mass-murder. If their oath of allegiance to their Führer absolved them from qualms of conscience, can it also acquit them of moral or criminal guilt?

Then, My Lord, if I might resume, after these matters contained in the intervening pages, on Page 35, Line 6. My Lord, I just want to show how it is related to the lower groups of the Political Leaders which we are considering. My Lord, that is after dealing with the various reports and objections to the murder of 270,000 persons on this excuse of euthanasia.

Kreisleiter from all over Franconia were reporting in similar terms. The Kreisleiter from Lauf wrote to the Gaustabsamtsleiter:

> "The doctor also informed me that it was well known that the Commission consisted of one SS doctor and several subordinate doctors, that the patients were not even examined and that they only pronounced the verdict in accordance with the medical history noted down."

Then Mrs. Marie Kehr lost two of her sisters in that way and wrote to ask the Reich Minister of the Interior under what decree they had been killed. The Defendant Frick's office passed the matter on to the Gaustabsamtsleiter in Nuremberg. I quote:

> "I request that you investigate whether Kehr is politically reliable, especially whether she does not have Church connections. In case this should be so, for my part there are no objections if you give Kehr the desired information orally."

The Gaustabsamtsleiter passed that letter on to the Kreisleiter. The Kreisleiter passed it on to the Ortsgruppenleiter, who reported—I quote: "That one can inform Mrs. Kehr. She is calm and circumspect."

In February 1941 the Ortsgruppenleiter of Absberg reported on the "wildest scenes imaginable" which had occurred in his village when the local sanatorium had been cleared of patients. You may think his attitude was typical of the great mass of Political Leaders. I quote:

> "These incidents during this action, which is after all necessary, are to be condemned all the more because even Party members did not shrink from joining in the lamentations of the other weeping spectators.... It is even said that these poor victims—as they are regarded by the clergy and the religious inhabitants of Absberg—were taken to the Catholic Church for confession and communion shortly before their departure. It seems absolutely ridiculous to want to take

away by an oral confession the possible sins of people some of whom completely lack all mental powers" (D-906).

My Lord, it has become manifest during these proceedings that other Political Leaders share the views of that Ortsgruppenleiter as to the absurdity of any oral confession.

It is unnecessary for me to remind you of the other reports, except to mention that in addition to the Gaustabsamtsleiter, the Kreisleiter, and the Ortsgruppenleiter, the Gauorganisationsleiter also becomes involved. The Leadership Corps was up to its elbows in this bloody business.

The Corps of Political Leaders take their share of responsibility for the mistreatment of prisoners of war. In September 1941 Bormann circulated to Gauleiter and Kreisleiter the regulations of the OKW for the treatment of Soviet prisoners of war. From the receipt stamp of that document it appears that the Gauschulungsleiter was the official on the Gau staff chiefly concerned with these matters. You remember the directives contained in those regulations. They were based on the fact that

"Bolshevism is the deadly enemy of Nazi Germany.... The Bolshevist soldier has therefore lost all claim to treatment as an honorable opponent in accordance with the Geneva Convention.... The feeling of pride and superiority of the German soldier ordered to guard Soviet prisoners of war must at all times be visible even in public.... The order for ruthless and energetic action must be given at the slightest indication of insubordination, especially in the case of Bolshevist fanatics.... With Soviet prisoners of war it is necessary already for reasons of discipline that the use of arms should be severe" (1519-PS, GB-525).

You will remember the special Einsatz groups set up by the SD to screen Soviet prisoners of war in the prisoner-of-war camps in order to discover and eliminate their leaders and intelligentsia. These orders, circulated to Gauleiter and Kreisleiter, explain the purpose and the method of work of those special purpose units and state:

"The Armed Forces must rid themselves of all elements among the prisoners of war which must be considered as the driving force of Bolshevism. The special conditions of the Eastern campaign demand special measures which can be carried out on their own responsibility free from bureaucratic and administrative influence" (1519-PS, GB-525).

No Gauleiter or Kreisleiter can tell this Court that he did not know that Russian prisoners of war were being murdered.

It was not only for their information that Political Leaders received these instructions. Bormann, writing to all Reichsleiter,

Gauleiter, Verbändeführer, and Kreisleiter in September 1944 emphasized:

> "The co-operation of the Party in the commitment of prisoners of war is inevitable. Therefore the officers assigned to the Prisoner-of-War Organization have been instructed to co-operate most closely with the Hoheitsträger; the commanders at the prisoner-of-war camps have to detail immediately liaison officers to the Kreisleiters. Thus the opportunity will be afforded the Hoheitsträger to alleviate existing difficulties locally, to exercise influence on the behavior of the guard units, and better to assimilate the commitment of the prisoners of war to the political and economic demands."

It was to be the task of the Political Leaders to orientate both the guards and the plant owners "again and again politically and ideologically," and this was to be done in co-operation with the DAF.

It is unnecessary to repeat the evidence of the treatment of Russian and other prisoners of war employed by Krupp. The Political Leaders were as callous of their prisoner-of-war slaves when they died as they had been while they lived. Gauleiter and Kreisleiter received from Bormann Frick's instructions for the burial of Soviet prisoners of war. Tarred paper was made to serve for coffins, no burial ceremonies or decorations of the graves were to be allowed, costs were to be kept as low as possible and the "transfer and burial is to be carried out unobtrusively; if a number of corpses have to be disposed of, the burial will be carried out in a communal grave" (D-163, USA-694).

What did the last rites of those whom they had worked to death matter to the Nazi Government and its Political Leaders? They mattered just as much or just as little as any recognized form of simple decency or honor.

As early as March 1940 Hess had circularized the Political Leaders with directives for behavior in case of landings of enemy planes or parachutists. You will remember the order, "Likewise enemy parachutists are immediately to be arrested or made harmless." In view of less ambiguous orders which were to follow and of the extraordinary precautions to maintain secrecy in respect of that order, can you now doubt what that somewhat ambiguous phrase was intended to convey? You remember that it was to be disseminated orally only to Kreisleiter, Ortsgruppenleiter, Zellen- and Blockleiter. Transmittal of the order by official orders, poster, press, or radio was prohibited, and amongst the other precautions it was declared to be a State secret document. You will remember also that in addition to all the Hoheitsträger being informed, the order went to the Reich Organization Directorate, the Reich Propaganda Directorate, and the Reich Student Leadership office, which

each had their own representative included in the Amtsleiter of the Gau, Kreis, and Ortsgruppen staffs, and that it went also to SS Gruppenführer Heydrich.

THE PRESIDENT: Sir David, would that be a good time to break off?

SIR DAVID MAXWELL-FYFE: Yes, My Lord.

THE PRESIDENT: The Tribunal will adjourn.

[A recess was taken.]

SIR DAVID MAXWELL-FYFE: In August 1943 Himmler instructed the Police that it was not their task to interfere in clashes between Germans and terror fliers (R-110, USA-333). Gauleiter were to be informed verbally.

In May 1944 Goebbels was writing to the *Völkischer Beobachter* that it was not bearable to use German Police to protect murderers. The next day Bormann directed all Gauleiter, Verbändeführer, Kreisleiter, and Ortsgruppenleiter that several instances had occurred in which aircraft crews who had bailed out or had made forced landings had been lynched on the spot by the incensed populace. I quote: "No police measures or criminal proceedings were invoked against the German civilians who participated in these incidents" (057-PS).

It was hardly necessary for us, in order to understand the purpose of that letter, to have captured a Gauleiter's order taking advantage of the invitation that Bormann had extended. In February 1945 the Gauleiter for Westfalen-South expressly directed his Kreisleiter to encourage the lynching of Allied airmen:

> "Fighter bomber pilots"—he wrote—"who are shot down are on principle not to be protected against the indignation of the people. I expect from all police offices that they will refuse to lend their protection to these gangster types" (L-154).

You will have seen Gauleiter Hoffmann's evidence before your Commissioners upon this matter and you will pay such attention to it as you think it deserves.

Let me conclude this review of the evidence against the Corps of Political Leaders by reminding you of the evidence of two witnesses called in defense of the organization, Von Eberstein, whom you yourselves heard give evidence for the SS, and Wahl, a Gauleiter, who testified before your Commissioners.

You know the evidence that all the Political Leaders have given as to concentration camps—that they had nothing to do with them, that they knew nothing of what was happening inside them.

But what did the witness Eberstein tell you? I quote from his evidence:

> "In the beginning of March 1945, the Gauleiter and Reich Defense Commissioner Giesler in Munich ordered me to come to him and demanded that I should influence the commandant of Dachau to the effect that when the American troops approached, the prisoners—there were 25,000 people there at the time—were to be shot. I refused this demand with indignation, and I pointed out that I could not give any orders to the commandant, whereupon Giesler said to me that he, as Reich Defense Commissioner, would see to it that the camp would be bombed by our own forces. I told him that I considered it impossible that any German Air Force commander would be willing to do this. Then Giesler said he would see to it that something would be put into the soup of the prisoners, that is, he threatened to poison them. On my own initiative I sent an inquiry to the Inspector of Concentration Camps by teletype and asked for a decision from Himmler as to what was to be done with the prisoners in case the American troops approached. Shortly thereafter the news came that the camps were to be surrendered to the enemy. I showed that to Giesler. He was quite indignant because I had frustrated his plans" (Record of 5 August 1946, Morning Session).

And lastly, the witness Wahl, Gauleiter of Schwaben, gave this evidence:

> "Question: 'Witness, I was asking you about the conversation which you had with your wife on the question whether or not you should resign your position as Gauleiter. Isn't the implication to be drawn from that conversation this: that you were ashamed of what other Gauleiter were doing and that all around you you saw things going on which you disapproved and wanted to disassociate yourself from?'
>
> "Answer: 'Yes.'
>
> "Question: 'That is true, isn't it?'
>
> "Answer: 'Yes, that is true.' "

And in answer to another question he said:

> "I want to stress the point that it is not my task and not my wish here to justify all the Gaue. Among the Gauleiter there were maniacs and bloodthirsty fools as everywhere else."

I pass to the SA.

Before dealing with the evidence against this organization, I would say a word upon the question of voluntary membership.

Counsel for the SA has argued that membership was not voluntary; it is said that great pressure was brought to bear upon the German people to make them join one or other of the Nazi Party organizations and that, in the case of certain sections of the SA, not only was pressure brought to bear but membership was enforced by decree. On the evidence to which I shall draw your attention you may well think that if, as in certain cases, undoubtedly pressure was exerted upon individuals to join the Party, and in some cases, perhaps, to join this particular organization, the consequences of refusal as they have been pictured by the Defense are very much exaggerated. It is submitted that even if you accept without qualification the evidence of some of those witnesses as to particular cases of compulsion, the evidence which you have as to the organization as a whole is perfectly clear: the membership was from the first until the last voluntary; never was there at any time compulsion recognizable in law as such, either physical or as a result of legal decrees.

Then, My Lord, I have set out, for the assistance of the Tribunal, the English law on compulsion. I do not intend to trouble the Tribunal with it for the moment. It takes the rest of Pages 41 and 42. If I might, My Lord, I should like to continue at the top of Page 43.

The English law upon what constitutes physical compulsion sufficient to excuse crime has been clearly established for many years and is stated in Halsbury's "L a w s o f E n g l a n d" (Hailsham Edition, Volume 9, Pages 23-24, Paragraph 20) in these words:

"A person compelled by physical force to do an act which, if voluntarily done, would be a crime, is free from criminal responsibility, but the person compelling him is criminally liable.

"The use of threats inducing a person, from present fear of death, to join with rebels is, it seems, an excuse, so long as the person is under the influence of such fear.

"Subject to this exception, a person who commits a crime when influenced by threats or 'moral force,' or by the confining of his person, or by violence not amounting to actual compulsion is not excused. Necessity, in the sense of compulsion arising from hunger or from imminent danger to a person's own life or property, is no excuse for crime."

Let me shortly discuss the evidence upon this point. The General Service Regulations for the SA, published in 1933, laid it down that, I quote,

> "He who cannot or will not subordinate himself is not suited to the SA and has to withdraw" (2820-PS, USA-427).

The Organization Book of 1940 states again, I quote:

> "Service with the SA is and remains voluntary.... As in recruitment for the SA no advantages may be promised and no pressure whatever may be exercised, the SA man should have the possibility to withdraw."

The witness Jüttner agreed with that statement as correct. He was asked: "Did it always remain a fundamental principle of the

SA that membership should be voluntary?" and answered: "That was always the principle adhered to by the leadership." He was asked again: "If a man no longer agreed with the SA views, was he expected to withdraw?" and said: "Numerous men left the SA for a variety of reasons."

By no stretch of imagination can the evidence given in respect of the Reiterkorps be said to constitute compulsion, physical or by decree. It is true that the original riding organizations were arbitrarily amalgamated into the SA, but as the witness Walle, called on behalf of this branch of the SA, himself admitted:

> "Membership in the SA was voluntary in 1933 and this did not change.... A man could resign from the Reiterkorps, but he had to give up his sport inasmuch as the riding installations were no longer at his disposal.
>
> "The Riders' Association"—he said—"submitted to the process of co-ordination because it enabled them to continue their athletic activity."

You may think that it was during the years 1933 and 1934 that the activities of the SA were more obviously criminal to all the people of Germany than at any other time. How then can the loss of "sporting activities" constitute compulsion and afford an excuse for membership? Is the risk of the loss of a horse and stable to be regarded as legal justification for participation in murder?

It should be remembered also that both in the case of the Reiterkorps and the Stahlhelm, although those organizations may have been amalgamated with the SA by legal decree, there is no evidence before you that the decrees contained one word which might be construed as compulsion upon individual members to take up membership in the SA.

The Stahlhelm is in much the same position as the Reiterkorps, except that the evidence that Jüttner gave before the Commission is clearer still. Let me quote from the transcript of his evidence:

> "Question: 'There was nothing, was there, to stop a member of the Stahlhelm from withdrawing from the SA when the two organizations were combined in 1933?'
>
> "Answer: 'As far as I was concerned in my district no member of the Stahlhelm who did not desire to do so would have been compelled to join the SA.'
>
> "Question: 'And that goes generally for the whole of Germany, does it not?'
>
> "Answer: 'It is reported that there were instances in which members of the Stahlhelm agreed to transfer only because it was ordered.'

"Question: 'But there is no instance where a man was forced to join or continue his membership?'

"Answer: 'No, Sir.' "

Almost pathetic evidence was given of the fate that awaited civil servants if they refused to join—refused to join not the SA, be it noted, but any Party organization. But the witness Boley, who himself gave this evidence, showed how exaggerated it was when he admitted to the Commissioner that in those offices in which he was himself employed, only 18 percent of the civil servants had become members of the Party or of one of its organizations. And those offices were the Reich Finance Ministry and Reich Chancellery—the very heart of the Nazi Government.

The witness Freiherr von Waldenfels is another outstanding example of how a German who had the character to stand up for what he believed to be right could continue to do so without any dire results. Himself a civil servant and a leading member of the Stahlhelm in 1933, he resigned on its amalgamation with the SA, refused to join the SA, the Party, or any other Party organization, yet nevertheless continued to hold his position until the end of the war.

Evidence has been given by the Defense that university students were compelled by decree to become members of the SA. This contention has been supported by an order of the SA University Department in Munich, dated 16 April 1934, which is contained in the SA Defense Document Book.

Upon that document I make two submissions. First, the reference to "SA service" does not connote membership of the SA but a course of training under SA direction; secondly, the sentence in Paragraph 3, "All newly matriculated students are therefore bound to join the SA," is not in accordance with the policy of the SA Leadership and does not represent the practice in universities generally.

We have submitted to you another similar order issued by the SA University Department at Cologne 2 days before. When that order is read with the Munich order, it becomes apparent that this submission is well founded.

Paragraph 1 of both orders is identical. All students are to be, I quote, "regimented by the SA University Department in order . . . to be physically and mentally trained in a uniform manner in the spirit of the National Socialist revolution" (D-971). In Paragraph 2 it is expressly stated that it is a matter of indifference whether they are members of the SA at all. Paragraph 3, while following the same form in both orders, differs essentially. In both cases the orders are said to be based upon the same decree of the Supreme SA Leadership of 27 March 1934. We have not seen that decree,

but Paragraph 3 of the Cologne order makes it clear that membership of the SA was not intended to be compulsory as is suggested by the Munich order. It is evident also that the SA service with which both orders are concerned is something different and independent from membership in the organization. How can compulsory "SA service" mean compulsory SA membership when it is expressly stated that except during the 11 days from 25 April to 5 May there is a ban on the enrolment of new members? The next words in both orders mark the essential difference between the two. In Munich students "are therefore bound to join the SA," while in Cologne they are, I quote, "thereby offered the possibility of joining the SA." If the SA service, which was to be compulsory for all German students, connoted membership of the SA, there could be no question of "offering" them "the possibility" of joining. You may think that in Munich, the heart of National Socialism, the decree of the Supreme SA Leadership of 27 March was deliberately misinterpreted to suit the desire of a particularly fanatical Sturmführer. On the face of the documents it is apparent that whatever was happening in Munich was not characteristic of every other university in Germany.

Jüttner confirms the case for the Prosecution. He states: "I have already expressed that in some instances pressure was exercised by organizations outside the SA, for instance, in the case of students and in the case of Finance Schools."

But in answer to the question: "There was nothing which compelled a student to join the SA if he disapproved of what the SA stood for?" he said: "I share that opinion."

I add, the Tribunal will observe that on the points of which I quote in the evidence of Jüttner, there is corroboration in writing of that evidence. The fact is as he explained: where organizations were amalgamated with the SA "the vast majority of men were proud of the SA and proud to serve in the SA." If further evidence were wanted of the voluntary nature of this organization, both in theory and in practice, it is to be found in the steps which were taken by the SA leadership itself to reduce its members after the large influx that had taken place in 1933 and 1934 by the incorporation of such organizations as the Stahlhelm and Reiterkorps, and by the large numbers of candidates that flocked to every Party organization after the Nazi seizure of power. From 4,500,000 in 1934, the membership of the SA had dropped to 1,500,000 at the outbreak of war in 1939. Jüttner explained the causes of this reduction. It was due partly to the Kyffhäuserbund, another old soldiers' organization, being excluded from the SA. But it was due also to the introduction of examinations for their members, failure to pass which resulted in dismissal, and to the fact that those who, I quote, "for reasons of their occupation were unable to do service and accordingly did

not cheerfully continue to serve us in the SA," were also dismissed. Such a weeding out and reduction in numbers from 4½ to 1½ millions in 5 years is hardly compatible with the story of the whole of the German youth, the whole of the German civil service and of the population generally being compelled to become members of this organization. It is submitted that this is conclusive evidence of the voluntary nature of this organization.

How can it be maintained that all civil servants, whose total number the witness Boley gave as 3 million, a million Stahlhelm members, 100,000 students, 200,000 Reiterkorps members, and others besides, were all compelled to join the SA, when the total membership of that organization in 1939 was only 1,500,000?

It may well be that upon a small unwilling minority pressure was brought to bear; that the consequences of refusal would have been serious. But this issue is to be decided upon recognized and established principles of law. Even were it not so, could we feel sympathy for these people? Did they show sympathy for the thousands of their fellow-countrymen that were taken to the horrors of the concentration camps? Did they sympathize with the thousands of Jews that were slandered and persecuted unceasingly over the years?

You will remember, however, that when certain questions in connection with the organizations were argued before you in February, I stated on behalf of the Prosecution that we did not seek a declaration of criminality against certain sections of the SA. We excluded

(1) All wearers of the SA Party badge who were not strictly members of the SA.

(2) Members of the SA Wehrmannschaften who were not otherwise members of the SA. You may well think, having heard the evidence that you have of the crimes committed by the Wehrmannschaften in Poland and in the Eastern territories, that that branch of the SA ought not to be excluded. Nevertheless, we feel that many members of the units which were involved in those atrocities were also members of the SA proper, and we therefore respectfully submit that our original statement can properly stand.

(3) Members of the SA Reserve who at no time served in any other formation of the organization.

(4) The National Socialist League for Disabled Veterans.

It has been reiterated time and again that the Prosecution are anxious to obtain a declaration of criminality only against those who bear a major responsibility for the crimes that have been committed. In view of this and in view of the evidence that has been presented to you since February, we desire respectfully to recommend certain additional exclusions from among the general membership of the organization.

First, the total strength of the SA in 1934 was given you by Jüttner as 4½ million. That figure included 1,500,000 members of the Kyffhäuserbund. Shortly after the amalgamation of that organization with the SA in 1933 the two were again separated. We respectfully recommend the exclusion of all those members of the Kyffhäuserbund who did not retain their membership of the SA after that separation.

Secondly, we believe that we are also justified in asking for the exclusion of certain sections of the Stahlhelm. So that you may understand the grounds for this recommendation, it may be of assistance if I briefly remind you of the structure and history of that organization. It was composed of:

(1) The Scharnhorst, which was the Stahlhelm youth organization for boys under 14, with a strength of about 500,000.

(2) The Wehrstahlhelm, which included the Jungstahlhelm (boys from 14-24 years of age) and the Stahlhelm sports formations (men from 24-35 years of age). The total strength of the Wehrstahlhelm was 500,000.

3) The Kernstahlhelm which consisted of men between 36-45 years of age. Its strength has been given as 450,000.

The total strength of the Stahlhelm was therefore approximately 1½ million men and boys.

In 1933 the Stahlhelm was placed under the control of the Nazi Party. The Scharnhorst was transferred to the Hitler Jugend, the Wehrstahlhelm to the SA proper, and the Kernstahlhelm to the SA Reserve. Since we have already excluded the SA Reserve, we are left to consider only that part of the Stahlhelm which was incorporated into the SA proper—500,000 members of the Wehrstahlhelm.

You have evidence both from witnesses and from documents contained in the Defense Document Book that many of these 500,000 Stahlhelm members were opposed to their transfer to the SA, and to the policies and aims of the SA and the Nazi Party. Many, including the witness Von Waldenfels, refused to join the SA. It is a possible hypothesis that many more, although opposed to the policies of the SA, were prepared to join in view of the assurance that was given to them that they would retain their independent character, identity, and leaders in the same way as did the Reiterkorps, and that they would never be called actively to associate themselves with the SA proper. On the other hand, there can be no doubt whatsoever that many wholeheartedly joined the SA, and participated to the fullest extent in its criminal activities. Jüttner himself is an example, and he declared that he was by no means alone. You will remember his evidence:

"Numerous SA men came to me in the first few months who had formerly belonged to the Stahlhelm; like myself they felt

regret that their fine old organization was no longer in existence. But together with me they hailed the fact that they were now permitted to participate in this large community of the SA."

Speaking of his own district he said:

"Really, after 1935, the nucleus of the SA was my old Steel Helmet organization; therefore many Steel Helmet men remained in the SA."

To exclude the whole of the Stahlhelm would entail the exclusion of men like Jüttner and many other Stahlhelm members who were to form the nucleus of the SA.

We believe that a just and practical distinction may be drawn between these two classes. In July and August of 1935 the assurance which had been held out to the Stahlhelm that they would retain their independent status side by side with their membership of the SA was broken. The organization of the Stahlhelm was finally dissolved; their uniforms, their meetings, and all their previous activities were prohibited. From that time the Stahlhelm members who remained in the SA were indistinguishable from the rest of that body. They had joined the SA in 1933, knowing, as one of their own witnesses has declared, the criminal nature of the policies and activities of the SA. Now in 1935 they could have had no illusion that by remaining members they would be expected to support that policy and participate in these activities. None who remained members after that date can absolve themselves from a major responsibility for the crimes committed by the SA and by the Nazi Government, of which the SA was one of the essential bulwarks. We therefore respectfully recommend for your consideration whether all those members of the Stahlhelm who resigned or were ejected from the SA prior to 31 December 1935 might also be excluded. We submit that those who remained are rightly included in the criminal organization of the SA.

You will appreciate the effect of these exclusions upon the number of SA members involved in these proceedings. The exclusion of the 1,500,000 Kyffhäuserbund and 500,000 Kernstahlhelm alone reduces Jüttner's total to 2½ million, and that takes no account of the other exclusions which the Prosecution have suggested.

Lastly, I would say a word about the Reiterkorps. I have already submitted that there is no legal basis for suggesting that their membership was involuntary. The Prosecution recognizes, however, that in so far as the Reiterkorps retained its separate organization of riding clubs, its own identity, and its own leaders, you may find that it is in a somewhat special position when you are considering the criminal responsibility of the SA. It is of course open to the Tribunal to give effect to that special position of the

Reiterkorps if it so desires. You will remember that its membership totalled 200,000.

Upon one further point which has been raised by the Defense I ought, perhaps, to say a word. It has been urged that the weekly paper *Der SA-Mann,* upon which the Prosecution have drawn for a small part of their evidence against this organization, is inaccurate and does not truly represent either the policy or the activities of the SA. You have heard the evidence for and against this proposition. I need only remind you that the paper was published by the official Nazi publishing house, the Eher Company, which published also *Mein Kampf,* the Organization Books, the orders and decrees of the Nazi Government, and all other official Nazi publications.

THE PRESIDENT: Sir David, before you pass from the subject of numbers, does the figure which you gave of 2½ million allow for replacements?

SIR DAVID MAXWELL-FYFE: No, My Lord; the same applies with regard to replacements. We submit that it would have to bear against that the very heavy number of deaths which had occurred during the years of the war. You have only got to figure a period of 5 years after the outbreak of the war. During that period, the 4½ million were reduced to 1,500,000. After that, the replacements, we submit, would be offset by deaths during the war. Your Lordship will also appreciate that what we are trying to do is to take the original figure—Jüttner's original figure of 4½ million. We submit that that is reduced to 2½ million. If you accede to our suggestion with regard to the Kyffhäuserbund and the Kernstahlhelm alone, that would reduce it to 2½ million. You then have to take into account our suggested exclusion of the Stahlhelm members who left before the end of 1935, and then, of course, we leave the question of the Reiterkorps to the Tribunal; but after you have done that, after you have arrived at a figure which may be somewhere about 2 million, the fact is that that figure was reduced in the 5 years to 1,500,000 according to Jüttner's evidence.

I was dealing with the *SA-Mann* and I continue: it carries under its title the description "The official organ of the Supreme SA Leadership." Its editor, writing to the Defendant Rosenberg, describes it without contradiction as the "combat publication and official organ of the Supreme SA Leadership," with a circulation of 750,000 (4009-PS, GB-614). Lutze himself recommends it in his annual training directive for 1939 as one of the official, I quote, "aids to the preparation and carrying out of training." I submit to you that in the face of that evidence the testimony of witnesses for the Defense upon this matter ought not to be accepted.

I invite you to consider the whole of the literature you have seen in connection with this organization. It is all the same—all about

war, about lawless violence, about racial hatred. There is not one word on the ordinary matters of decent living, of the interests and activities and the ways of life of ordinary, decent, civilized, peaceful citizens—the things which fill great portions of the newspapers and literature of decent, law-abiding, peaceful countries. Compare the literature of the SA with that of any organization or society in any other country in Europe. The SA, the organization which prided itself upon its responsibility of educating and training the manhood of Germany, spoke only of militarism, of arrogance, of bullying and hatred. What need for this if their purpose was what they say? I turn to consider very briefly the evidence upon which we base our submission that this organization was criminal. The aims of the SA were the aims of the Nazi Party itself. Training in the SA is described in the Organization Book as—I quote:

> "Education and training according to the doctrines and aims of the Führer as they are set forth in *Mein Kampf* and in the Party Program for all phases of our lives and our National Socialist ideology..." (2354-PS, USA-323).

Lutze, Chief of the SA, speaking to the Diplomatic Corps and foreign press in 1936 told them:

> "When I state in the beginning that the obligations of the SA are those of the Party, and *vice versa*, I only mean that the SA considers the Party Program its own as well.... The SA cannot be independent of the National Socialist Movement but can only exist as a part of it. In the framework of the Party the SA are its protective troops, its fighting shock troops, to which belong the most active members of the Movement, politically speaking. The tasks of the SA are those of the Party, and *vice versa*. They are therefore of an internal political nature" (2471-PS, USA-413).

In the interests of time I do not propose to dwell upon the evidence of how this organization performed its role as "the protective troops" and "the fighting shock troops" of the Party. All this may well be said already to be a matter of historical fact. In the words of the Indictment, the SA was developed by the Nazi conspirators, before their accession to power, into a vast private army, and utilized for the purpose of creating disorder and terrorizing and eliminating opponents. It is said that the violent and criminal activity of its members, if indeed any such activity existed at all, was purely defensive—forced upon it in order to protect its members and their Party leaders from the violence of the Communist and other political parties. It is for you to judge the value of that evidence. In doing so, you will have it in mind that all the documentary evidence upon this question, which is being submitted to you in the Defense document book, is of Nazi origin and authorship. You may think

that that description of the SA as a defensive organization is wholly inconsistent with the evidence you had from the witness Severing, from Gisevius, and in the affidavit you have had from the American Consul, Geist.

My Lord, I set out part of the evidence. Again I don't propose to read it to the Tribunal today. I remind you of what Severing told you about the rowdy battalions and arrogance, and I ask the Tribunal to look at the last word of the quotation, at the top of Page 52:

> "The observation of the so-called armed organizations during the years of my office was one of my most important tasks. The toughest organization of all these turned out to be the SA. They were the rowdy battalion, and with the arrogance with which they sang their songs they forced themselves into the streets. They cleared the streets for themselves where there was no opposition for them. . . . Wherever the SA could exercise their terror unhindered they acted in such a manner. . . .
>
> "Those were not ordinary little fights between political antagonists during election fights. That was organized terror."

The Stahlhelm witness, Gruss, confirmed the evidence that Severing gave. "I believe," he said, "that, on the whole, Severing describes it correctly."

It is my submission that the evidence of SA criminality during the years 1933 and 1934, from the coming into power of the Nazi Government until the Röhm purge, is well established and may be dealt with shortly. The same violence, the same disregard for the law and for the rights and privileges of all but themselves, continued. It is sufficient to remind you of what Gisevius said—and again, My Lord, I remind you that is the statement of Gisevius about the use of the SA auxiliary police, about private prisons, about arrests; and again, if I may quote the last sentence of that quotation:

> "The SA organized huge raids. The SA searched houses, the SA confiscated property, the SA cross-examined people. The SA put people into jail. In short, the SA appointed themselves auxiliary police and paid no attention to any of the customs from the period of the liberal system. . . . Woe to anyone who got into their clutches! From this time dates the 'bunker,' that dreaded private prison, of which every SA storm troop had to have at least one. Taking away became the inalienable right of the SA. . . . The efficiency of a Standartenführer was measured by the number of arrests he had made and the good reputation of an SA man was based on the effectiveness with which he 'educated' his prisoners. . . .
>
> "Brawls could no longer be staged in the fight for power, yet the fight went on; only the blows were now struck in the full enjoyment of power."

Gisevius went on to describe in more detail the illegal arrests of political opponents by members of the SA, the prisons they established and the treatment meted out to their victims. He said:

> "It was the bestiality tolerated during the first months that later encouraged the sadistic murders in the concentration camps."

Having heard Schäfer, first Commandant of Oranienburg, cross-examined, have you the slightest doubt that atrocities were committed by SA men in that camp? You have the evidence of the witness Joel that the SA established a concentration camp at Wuppertal on the initiative of the local SA commander. At Hohnstein and at Bredow also SA guards were torturing and murdering their prisoners (787-PS, USA-421). You will remember the letter written in June 1935 from the Ministry of Justice to Hitler himself:

> "In the camp serious mistreatment of the prisoners has been going on at least since the summer of 1933. The prisoners were not only, as in the protective custody camp at Bredow near Stettin, beaten into a state of unconsciousness for no reason with whips and other tools, but were also tortured in other ways..." (787-PS, USA-421).

Comment is unnecessary, except to emphasize that sadism and illegal arrests of this kind were being practised and carried out by SA men throughout the Reich. I quote:

> "Within 6 weeks of the Nazis' coming to power in January 1933 the German newspapers were quoting official sources for the statement that 18,000 Communists had been imprisoned, whilst 10,000 prisoners in the jails of Prussia included many Socialists and intellectuals" (D-911, GB-512).

Sollman, Social Democrat member of the Reichstag, was taken to the Brown House in Cologne to be "tortured, beaten and kicked for several hours" (3321-PS, USA-422). In Nuremberg a man called Pflaumer was beaten on the soles of his feet until he died (D-923, GB-615). In Munich the former editor of the newspaper *The Lower Bavarian Peasant,* Dr. Alois Schlögl, had his house wrecked and was himself ill-treated (D-906, GB-616). These are only a few of the incidents of this kind which the Prime Minister of Bavaria describes when he says, I quote: "Of their total number throughout Germany there can be no count" (D-930, GB-617).

This was no political revolution. This was no self-protection from Communist opposition. These men were the servants of the Government with the sure knowledge that all Government agencies—the press, the law, and the Police—were under orders to condone and to assist. They ran no risks; their victims had no court nor protection to which they could appeal. This was nothing but sheer sadism, criminal brutality, encouraged by the Party and the SA leadership. You have the evidence of Geist, the American Consul:

> "I personally can verify that the Police had been instructed not to interfere.... These officers told me that they and all the other police officers had received definite instructions

not to interfere with the SA, the SS, or the Hitler Youth" (1759-PS, USA-420).

Defendant Göring, speaking on 3 March 1933, described the role that the SA were to perform from then on. He declared that the Communists would be suppressed by the brown shirts. The Police would not be used as in a bourgeois democracy; I quote:

> "I do not have to give justice; my aim is only to destroy and exterminate, nothing else.... The struggle to the death in which my fist will grasp your necks I shall lead with those down there—those are the brown shirts" (1856-PS, USA-437).

Let me deal in rather greater detail with the activities of the SA during those years after 1934. It has been suggested that following the Röhm purge the SA diminished both in numbers and in importance and that the criminal activities of its members ceased. That its numbers were reduced is unquestionable—I have indicated the evidence of the reasons why. That it waned in importance is also true to the extent that official favor was bestowed more and more upon the SS for reasons that are well known. Nevertheless, the SA, both in the eyes of its own leaders, its members, and of the Nazi Party authorities, remained politically and militarily an important and vital force.

By June 1934 the political opponents of the Nazi Party had been suppressed or incarcerated. Little wonder that we have less evidence of those incidents of "mastery of the streets" which filled the history of Germany during previous years. But the aims of the organization remained the same—fanatical support of the policy of the Nazi Government, the suppression of such opposition as remained, particularly the Churches and the Jews. And in addition intensive preparation for aggressive war.

Already the SA and the SS had been employed in the action to dissolve the trade unions. The Church and the Jews remained an ever present problem. I have already referred to the Nazi Party's policy of suppression of all Church influence, but I would remind you of the part the SA was playing in this fight during the years after 1934. You remember the incident in Freising church in February 1935, when the Kreisleiterin instructed all her Nazi women to accompany SA storm troopers to attend the service in Freising church. It was SA men who arranged for the bells to ring during the Cardinal's service. It was SA men who afterwards led Hans Hiedl out into a field at night and beat him unmercifully for his resentment at the interference with the service, and I set out Hans Hiedl's account of the story (1507-PS, GB-535).

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"The leader took a handkerchief from his pocket and tied it over my mouth. He then pressed me to the ground and held me while the two others started beating me. They gave me about 15 to 20 heavy blows from the seat down to the ankle of the left foot. The gag became loose and I screamed loudly. They then let go of me and helped me up. I was given strict instructions not to tell anybody about this incident if I wanted to keep my business. They then gave me a kick and told me 'Now run home in a trot, you black brother.'"

Are you impressed with the defense that that was only an isolated incident? When you consider the evidence of wholesale and widespread acts of violence which had characterized the SA in the eyes of all Germany and the world during the years of Nazi struggle, can you doubt that similar incidents were taking place throughout Germany in 1935 and afterwards, whenever the occasion presented itself? Does the very nature of an organization such as this change within a few months? If the nature and aims of the SA had changed, why should the *SA-Mann* have been publishing articles in 1937 and 1938 decrying the Church in such articles as:

"My dear Franciscans"
"The Black Balance — Political Catholicism"
"The Church wants to dictate to the State"
"Unmasked Political Catholicism"

Finally,

"Does the Vatican want War?" (3050-PS, USA-414).

If the violent manners of the SA had been converted during these years, why should the official organ of its Supreme Leadership have been recounting stories of its early battles? Their titles tell their tale:

"We subdue the Red Terror"
"Nightly street battles on the Czech border"
"The SA breaks the Red Terror"
"Bloody Sunday in Berlin" (3050-PS, USA-414)

and that description of "9 November 1923 in Nuremberg" when, during the height of the disturbances, someone shouted, "The Jewish place will be stormed! Out with the Jews!" (3050-PS, USA-414).

The part the SA played in the ever-increasing persecution of the Jews dissolves any doubt there may be of the continuing criminality of that organization during the years after 1934. Of the boycott in April 1933 Goebbels had written in his biography:

"1 April 1933: All Jewish stores are closed. At their entrances SA sentries are standing" (2409-PS, USA-262).

It was only an example of how throughout all Germany the SA provided the Nazi Government with a means of putting its

policy into effect. The instructions issued by the Defendant Streicher and his committee had directed:

> "The SA and the SS are instructed to warn the population by means of pickets from entering Jewish enterprises once the boycott has started" (3389-PS, USA-566).

You have the evidence of Kurt Schmitt, Minister of Economics and member of the Reich Cabinet until January 1935:

> "...I have to say that the SA gained a more and more disastrous influence as a destructive element in economic and Jewish matters..." (4058-PS, USA-922).

You have the evidence of their own witness, Freiherr von Waldenfels, who was asked: "Did the SA take an active part in the persecution of the Jews after 1934?" and answered:

> "As far as I have been told stories—yes. I myself saw the looting of shops in Munich, but whether that was done by order or whether it originated with individuals I cannot say."

He tried to minimize the significance of the SA after 1934, but his evidence was quite clear.

> "Question: 'In their less important role did they continue the policy and practice that they had been carrying out before, the persecution of the Jews?'
>
> "Answer: 'There is no doubt.' "

Goebbels, speaking to the SA in October 1935, reminded them that they were the "strongest arm of the Movement" and that the Nazi Government was an "anti-Jewish Government" (3211-PS, USA-419).

If the active persecution of the Jews was not a continuing role of the SA, after 1934, why should Lutze, Chief of Staff of the SA, speaking to the Diplomatic Corps and deputies of the foreign press in January 1936, have had to explain away the title with which the foreign press so often branded the SA—"The bearer of a barbaric and uncivilized race struggle"? (2471-PS, USA-413). Why should all these articles have been appearing in the *SA-Mann* almost monthly during the years 1935-1939 in wording so similar to that favoured by *Der Stürmer*? The titles are sufficient to indicate their nature. I only draw attention to three: "Murder, the Jewish Slogan"; "Jewish World Revolution in the U.S.A."; "Gravediggers of World-Culture" (3050-PS, USA-414).

And if the members of the SA were not in fact continuously and actively persecuting the Jews after 1934, how is it possible to account for the part they played in the demonstrations of November 1938? You will remember the instructions received by

the SA 50th Brigade at Darmstadt in the early morning of 10 November:

> "On the order of the Gruppenführer all the Jewish synagogues within the 50th Brigade are to be blown up or set on fire immediately.... The action is to be carried out in civilian clothes" (1721-PS, USA-425).

You will remember also the reports of the different SA Führer to the SA Group Headquarters of the Electoral Palatinate—in the area of the 50th Brigade, 35 synagogues blown up, destroyed by fire, or wrecked; in Mannheim, 21 synagogues, churches, or meeting houses; in the area of Standarte 174 of 151st Brigade, all the synagogues destroyed and Jews taken into protective custody; in the area of Standarte 250, 11 synagogues destroyed, all shop windows of Jewish stores broken, the Rabbi and several prominent Jews taken into protective custody by the Gestapo "for their own safety," the "infamous Rabbi Neuburger," who was known because of his foreign connections, taken into protective custody "at the instigation of the SA," together with all male Jews from various villages; in the area of Standarte 17, two synagogues completely burnt down and several Jewish stores demolished; and the report from the 51st Brigade—"Completion of the matter of the synagogues. Everything has been carried out up to Röhlsheim."

Then, My Lord, I give some further details and I ask Your Lordship to leave the next paragraph and go on to the last paragraph on that page, where I say:

Those events in the Mannheim district cannot have been, as the Defense would have you believe, an exception to the policy of the SA Leadership and to the general behavior of SA members in the rest of Germany. Altogether 267 synagogues were destroyed that night. We can properly ask: Why should the 50th, 51st, and 151st Brigades alone have received instructions to destroy all synagogues? Why should Jüttner himself have issued to all SA units the orders from Hess that all offices of the Party and its branches which had safeguarded valuable property were to hand it over to the nearest office of the Gestapo?

We ask you to say that that evidence is in itself conclusive. Nevertheless you have in addition the report of the proceedings of the Supreme Party Court in connection with the murders of Jews which took place during those demonstrations. Fifteen SA men committed murder. They did so all over Germany: in East Prussia, in Dessau, in Hanover, in Bremen, in Saxony, and in Munich. Were they, too, all isolated incidents?

Göring's biographer wrote of the SA in 1937:

> "The present reorganization of the Security Police is hardly noticed by the public. Their ranks are strengthened by the SA, the most reliable instrument of the Movement" (3252-PS, USA-424).

Hardly could any organization have received a more damning testimony. I pass to the preparation for war and wartime activities.

Immediately after the Nazi Party came to power the SA became the embryo army with which the Nazis commenced their preparation for aggressive war. Geist, the American Consul, tells you:

> "Particularly through the years 1933 and 1934 hordes of storm troopers and SA were much in evidence practising military exercises. They were being converted into a military organization. I frequently encountered the storm troopers deployed in fields and forests engaged in military technical exercises. This was all part of a general plan to prepare Germany's manpower for war" (1759-PS, USA-240).

Geist's assumption is confirmed by Lutze himself, writing in 1939:

> "But already in 1920, at the founding of the SA, the Führer established the extensive mission of this SA.... The SA shall be the bearer of the military thought of a free people. In the same sense the Führer said in his book *Mein Kampf:* 'Give the German nation 6 million perfectly trained bodies in sport, all fanatically inspired with the love of the Fatherland and trained to the highest intensive spirit, and a National Socialist State will, if necessary, have created an army out of them in less than two years.'
>
> "The men never forget the mission of the Führer to require the military training of the German man and to reconstruct the military spirit in the German people" (3215-PS, USA-426).

What use is it for SA witnesses to come now and tell this Tribunal that "The SA did not have any military character and did not desire to have it.... The SA always preserved the non-military character of its training program."

There is abundant other evidence of the military character and purpose of the SA and of its intensive training and preparation for war.

Dr. Ernst Bayer, writing on the orders of the Supreme SA Headquarters in 1938, yet again describes the aims of the SA:

> "The SA was commissioned to obtain an increase and preservation of a warlike power and a warlike spirit in the German people" (2168-PS, USA-411).

As early as May 1933, Von Reichenau suggested that the Supreme Command of the SA should be represented on the Reich Defense Council, and I add that there was a pencil note showing that that has already been done (2822-PS, GB-205).

A regular officer was appointed to the SA to assist them in "military" training. "For the purpose of camouflage... he was to wear SA uniform" (2823-PS, USA-429). We know the form which the training took from 1933 until 1939 from the training directives and other documents—some issued by Lutze himself—shooting, grenade throwing, judging distance, map-reading, and marching

(2820-PS, USA-427; 1849-PS and GB-610; 2401-PS, USA-430; D-918, GB-594). We know also that as early as July 1933 the SA had formed specialized units such as signals and motorized companies and separate air wings. The SA Command was anxiously stressing the need for secrecy in the case of any publications, I quote, "which might give other countries an opening to construe German infringement of the terms of the Versailles Treaty" (D-44, USA-428).

The publication of pictures "enabling other countries to prove the alleged formation of technical troop units" was forbidden. It is hardly necessary again to quote Dr. Ernst Bayer to see the purpose of these technical units, but I quote him:

> "There originates in these technical units of the SA a trained crew whose capabilities and knowledge are not the last things of extraordinary value in the service for defense of the country" (2168-PS, USA-411).

Similarly he wrote of the Reiter Corps:

> "... At present the SA each year is able to furnish many thousands of young trained cavalrymen to our Wehrmacht" (2168-PS, USA-411).

Can we doubt that every member of the SA knew to what end all this was leading when the Chief of Staff himself was saying publicly that the training principle of the SA was "always the spiritual, moral, and physical culture of militarization of the whole German nation"? (3050-PS, USA-414).

In March 1934 permanent liaison had been established between the SA and the Reich Defense Ministry in connection with all "A" tasks. Jüttner has explained what these "A" tasks were—"training and border protection." Did border protection mean preparations for the military seizure of the Rhineland, Austria, and Czechoslovakia?

In that same month of 1934, the SA were in fact forming in the Rhineland an armed staff with a heavy machine gun company (D-951, GB-607).

Early in 1934 the SA were also making plans—I quote:

> "... to have 'the Austrian formations in Bavaria march into Austria around 8 or 9 February. Then a military dictatorship would be proclaimed" (4013-PS, GB-608).

The account of the part the SA played in the abortive Dollfuss Putsch is before you. When the time eventually came for the Anschluss, SA units were among the first to enter Austria (3050-PS, USA-414).

THE PRESIDENT: Sir David—

SIR DAVID MAXWELL-FYFE: Your Lordship—

[The Tribunal recessed until 1400 hours.]

Afternoon Session

SIR DAVID MAXWELL-FYFE: My Lord, I continue with the military activities of the SA, with the last sentence on Page 62.

In Czechoslovakia the SA provided the chief support for the Sudeten Free Corps. In October 1938, a few weeks after the Munich crisis, the OKW liaison officer with the Free Corps reported:

> "Supplies had been organized by the SA, ... arms supplied by the Austrian SA. With magnificent camaraderie and unselfishness, the SA Leadership had looked after the Free Corps materially. Equipping and feeding remained in the care of the NSDAP and the SA."

My Lord, I add, to remind the Tribunal, that in the appendix to that document there will be found a list of the prisoners, the booty taken by the Free Corps, and the casualties inflicted by them in what was a time of peace. This support to the Free Corps was certainly included in "border control," as Jüttner himself admitted.

The crimes of the SA did not end with the outbreak of war. Again I quote from the witness Jüttner:

> "At the beginning of the war with Poland the SA Group Sudeten carried out transports of prisoners of war into the camp. Other SA groups in the East may have been used for similar purposes. Later on the SA Leadership and the SA as an organization had nothing to do with this question."

When you consider the evidence you have heard of the appalling conditions in which these prisoners from the East were transported into their camps, are you satisfied that that task of guarding transports was as innocent as it appears?

Jüttner has also left us a report, dated June 1941, describing the activity of the SA in the war. In the communication zones its members gave assistance to the Political Leaders in their tasks of education and orientation. 21 groups of SA men were being used for guarding prisoners. The organization of the SA groups in Danzig, Posen, Silesia, and the Baltic provinces is described in these words:

> "In these regions also, as before in the fight for power, the SA was the assault unit of the Party.... In these regions also SA service, practically speaking, is directed towards strengthening the defensive forces. It was therefore necessary to overcome the inferiority complexes of the racial Germans, the result of Polish suppression, and to bring their appearance and bearing into keeping with SA standards" (4011-PS, GB-596).

How sinister these innocent words become in view of all the evidence of what was taking place in these eastern and Baltic provinces.

The administration of the ghetto of Vilna was in the hands of the SA and its inmates were guarded by SA guards. Some of these Jews were made to live enchained in deep pits where the SA

> "... fastened chains round both ankles and round the waist; they weighed 2 kilos each and we could only take small steps when wearing them. We wore them permanently for 6 months. The SA said that if any man removed the chains he would be hanged" (D-964, GB-597).

Their work consisted of digging up mass graves:

> "We dug up altogether 80,000 bodies.... Amongst those I dug up I found my own brother" (D-964, GB-597).

At Vilna, too, SA guards were forcing the Jews to extract the gold from the teeth of their dead brothers with prongs, washing it in benzine and packing it into 8 kilogram boxes which the SA officer in charge personally took away.

HERR BÖHM: Mr. President, I believe that the statements which were just made refer to Affidavit D-964, the submission of which by the Prosecution was rejected by the Court. It is Affidavit GB-597. The whole affidavit is reproduced in print here on Page 64, and the contents of the statements just made have been taken from this affidavit, the submission of which is not approved.

SIR DAVID MAXWELL-FYFE: My Lord, I respectfully disagree with Dr. Böhm. I have the affidavit in front of me, D-964, which has the exhibit number GB-597. Paragraph 7 reads:

> "Our work consisted in digging up mass graves, removing the bodies and burning them."

THE PRESIDENT: Yes. But, Sir David, what Dr. Böhm was saying is that we rejected the affidavit.

SIR DAVID MAXWELL-FYFE: My Lord, not this affidavit. I distinctly remember reading it. It has an exhibit number.

I selected one affidavit dealing with each kind, and this one of Szloma Gol was the affidavit I selected with regard to Vilna.

THE PRESIDENT: Dr. Böhm, what ground do you have for saying that it was rejected? If it was rejected, you must have some reasons for thinking so? Where is the transcript? Do you have the transcript with you?

HERR BÖHM: I am of the opinion that this affidavit was among those affidavits the submission of which the Court rejected. At the moment I cannot look into this, but I shall be glad to do so after the session, in order to make sure that this is correct. I believe that

this affidavit belonged to the affidavits which were rejected on account of the conclusion of the submission of evidence.

THE PRESIDENT: This was not one of the 11 affidavits which were rejected?

SIR DAVID MAXWELL-FYFE: No, My Lord. Your Lordship will remember that I had about a half dozen Jewish witnesses from the Baltic provinces, and the Tribunal said that I could call three, and that they were to be available for cross-examination by Dr. Böhm.

The deponent of this affidavit, Szloma Gol, was one of the three that I selected, and I put in this affidavit, which received the Exhibit Number GB-597.

My Lord, that is the recollection of myself, of Colonel Griffith-Jones and of Major Barrington, who were helping me at the time. And the fact that it has an exhibit number is *prima facie* evidence that the Tribunal accepted it.

THE PRESIDENT: I think you had better go on. If Dr. Böhm can produce evidence that it was rejected, it will be stricken from your speech and will be disregarded.

SIR DAVID MAXWELL-FYFE: Very well, My Lord.

The ghetto of Schaulen, south of Riga, was in charge of the SA. 700 to 800 men were there, recognizable by their brown uniforms and swastika armlets.

> "In August 1941 the SA surrounded the whole ghetto and numbers of them went into the houses and took out women, children, and old men and put them into lorries and drove them away. I saw all this myself. It was done exclusively by SA. I saw them take children by the hair and throw them into the lorries. I did not see what happened to them but a Lithuanian told me afterwards that they had been driven 20 kms. away and shot. He said he had seen the SA make them undress and shoot them with automatic pistols" (D-969, GB-600).

The SA guarded the ghetto of Kaunas where 10,500 Jews were shot in the dreadful "action" of 28 October 1941. So also did they guard the labor camps of Sakrau, Mechtal, Markstedt, Klettendorf, Langenbielau, Faulbrück, Reichenbach, and Annaberg in Upper Silesia, where Poles, Frenchmen, Belgians, Dutch, and Greeks slaved and died through ill-treatment and malnutrition and where "the methods of the SA by no means lagged behind those of the SS."

There can be no doubt of the veracity of these Jews who underwent those years of nightmare in the ghettos and labor camps in the East. Not only are the conditions they describe confirmed again

and again from other sources and from the Germans' own documents, but even the identification of a particular SA man they mention is corroborated. Leib Kibart gave you the name of the district commissioner in whose courtyard the Jews from the Schaulen ghetto were daily cursed and beaten by their SA guards. He told you he was called Gewecke and that he was a member of the SA. We have the signature of Gewecke on one of his own letters dated 8 September 1941, complaining that the SS were interfering in his arrangements for the "orderly confiscation of Jewish property." The letter-heading on that document is "The Regional Kommissar in Schaulen."

Nor was it only in guarding duties that the SA were employed. They were forming Einsatzkommandos of their own, and units of the SA were sharing in the bloody work of annihilating the partisans. The Regional Commander of the Security Police and SD in Kraków, in writing to the Defendant Frank, tells of the work of a special SA Einsatzkommando which was formed for the purpose of collecting workers from the civilian population.

The Generalkommissar for White Ruthenia reported in June 1943 that,

> "By order of the Chief of Band Combating, SS Obergruppenführer Von dem Bach, units of the Wehrmannschaften have also participated in the operation. SA Standartenführer Kunze was in command of the Wehrmannschaften" (R-135, USA-289).

That action to which the Generalkommissar referred was the terrible operation "Cottbus," which you will remember and of which the Generalkommissar reported "the political effect upon the peaceful population is simply dreadful in view of the many shootings of women and children."

The SA had been organized in the Government General in 1941. Speaking in December 1943, the Defendant Frank said:

> "When 2½ years ago I gave orders for the SA to be formed, I was guided by a thought which today fills me more emphatically than ever. I strove to ensure... that an emergency reserve of absolutely unshakable National Socialists should, under all circumstances, exist in the Government General. It is quite clear that this emergency reserve of pronounced National Socialist fighters can only be the SA.... Here as an SA comrade with my SA comrades I can, within the framework of the SA, truly cultivate what has to do with the 'Volk' in a way which I cannot do in the political field, where I have to take numerous things into account and have to have a whip in my hand without interruption, like a lion-tamer in a lion's cage, in order to keep the bandits in check. That is

a point of view which a Gauleiter in the Reich never need take into account.... It (the SA) has for the first time been employed here in a new area with new methods and tasks which, however, have been solved owing to the very fact that the SA is here, the same as it was in the period of struggle in the Reich" (2233-PS).

Meanwhile at home in the Reich the SA were taking over—I quote:

"... the functions which had previously been entrusted only to the SS and Sipo and Army, for instance, the guarding of concentration camps, prisoner-of-war camps, supervision of forced laborers in Germany and occupied territories. This co-operation of the SA was planned and arranged by high offices in Berlin as early as the middle of 1943" (3232-PS, USA-435).

In Styria the camp of Frauenberg was being operated as a labor camp for habitual drunkards, delinquents, and shirkers. 300 inmates worked in the neighboring stone quarries and on road construction. SA men provided the guards. Can we picture the conditions in which these shirkers and delinquents lived—or died?

Violence and murder and mastery of the streets during the years of struggle! Illegal arrest, unauthorized concentration camps, unbelievable sadism during the years of triumph, 1933 and 1934! Ruthless suppression and brutal persecution of Jews and Christians and of every opposition, coupled with warlike and aggressive training during the years from 1934 until the outbreak of war! And after that, more concentration camps, more sadism, more suppression and persecution, this time of the allegedly racially inferior peoples they had conquered; and violence and murder, but not, as it had been in the distant days of 1933, of individuals; now it was of whole peoples. It is the same pattern running through the years. Can your decision frank these men again to terrorize the peoples of Germany and Europe?

My Lord, I do not conceive it to be necessary to deal at any length with the evidence against the SS. You are already too well aware of the character of this organization and of the activities of its members. The letters SS appear in connection with almost every one of the crimes, great and small, of which you have now heard daily over the course of almost 10 months. It may all be summarized, even if understated, in the words of their leader Himmler, I quote:

"I know there are some people in Germany who become sick when they see these black coats. We understand the reason and do not expect that we shall be loved by too many" (1851-PS, USA-440).

I would therefore address you only upon one or two particular points that have arisen and to which the Prosecution attach particular importance.

The history of the development of the SS may be stated in a few words. Created originally as an élite bodyguard for the protection of Hitler himself, together with the SA it formed a private Nazi army and the basis of what was to become the vital instrument in the conspiracy to wage aggressive war. Its value as a thoroughly reliable "instrument of the Führer" was demonstrated in June 1934 when it performed the function of executioner in the blood purge which accompanied the murder of the SA Leader Röhm. I quote:

> "It appalled everyone," said Himmler later, "and yet everyone was certain that he would do it again if such orders were issued and if it were necessary" (1919-PS, USA-170).

The willingness of the SS to do it again was to be exemplified a millionfold in the ensuing years.

Until January 1933 the SS consisted of a single unit. There were no special branches, and, apart from their common role with the SA and their special position as Hitler's bodyguard, they had no other particular tasks. After the Nazi Party had come to power, however, and particularly after 1934, its members increased and its organization expanded and became more complex. New units were created, such as the SS Totenkopfverbände, the task of which was, and continued to be, the guarding of concentration camps. A few selected units were given arms and in effect became Himmler's private army, known as the SS Verfügungstruppe. At the same time certain functions became the speciality of other groups which, while not having a separate organizational status, came to be designated as separate branches, for instance, the SD, who were the intelligence service of the SS and who were later to work in such close co-operation with the Gestapo.

Although it became customary to distinguish between the several branches and formations of the SS by name, in terms of administration and command they were parts of the one SS, all under the command of the Reichsführer SS and all administered and controlled through the various main offices of the SS Supreme Command.

At the outbreak of war the majority of the Allgemeine SS, the great mass of the SS membership which had remained unarmed, were drafted into the Wehrmacht. New recruits were enrolled in the Verfügungstruppe, which was expanded to form the fighting divisions of the SS and it was these fighting divisions which in about 1940 came to be known as the Waffen-SS.

The Tribunal has seen from the report of the SS Statistical Institute how the SS had developed by 30 June 1944. By then it had a total membership of 794,941. The Allgemeine SS—the original nucleus of the SS—had declined in importance during the war because more than half of its 200,000 members had been called up to the Wehrmacht, the Labor Service, or other special Nazi agencies. The remaining 594,000 belonged to the Waffen-SS. The Tribunal has seen how 368,000 of the Waffen-SS were in field units. About 160,000 were in reinforcement, training, and reserve units; 26,544 were in other units and offices directly subordinate to the Operational Headquarters of the SS High Command; 39,415 were in the SS Main Offices.

It is particularly significant to see how these 39,415 men of the Waffen-SS were distributed. The Tribunal will see that there I attached a total. Witnesses have told you that the Waffen-SS had nothing to do with the concentration camps. But no less than 24,000 of them were in the WVHA, the offices which organized and were responsible for the administration and personnel of the concentration camps. That 24,000 did not include the Totenkopf SS which provided the guards. Waffen-SS men also provided the manpower of the various Nazi genocide organizations operating, within and on behalf of the SS, the Race and Settlement Main Office, the Office of the Reichskommissar for the Consolidation of German Folkdom, the central office for persons of German race, the personal staff of Himmler, including Sievers' infamous Ahnenerbe.

It is said of the Waffen-SS that it was in effect a purely military organization the character of which was no different from any unit of the Wehrmacht. On the evidence this is not so. It is true that the Waffen-SS was the combat arm of the SS. But, although its fighting formations came under the command of the Army for operational purposes, they always remained an integral part of the SS.

Indeed, the Hitler order regarding the function of the SS on mobilization provided that if placed under the command of the Army it, I quote: "remains a unit of the NSDAP politically." Recruiting, training, promotions, administrations, and supply of the Waffen-SS throughout the war remained the function of the Supreme Command of the SS. It was recruited through the SS Main Office. It was organized, administered, and supplied through the SS Operational Office, which was the seat of its Command Headquarters.

Members of the Waffen-SS were subject to jurisdiction by the SS Main Legal Office. Like all other formations of the SS, the Waffen-SS was subject to Himmler's jurisdiction as Reichsführer SS. It was in theory and in practice as much an integral part of the

SS organization as any other branch of the SS. You will remember the evidence that Von Rundstedt gave, I quote:

> "The troop units of the SS were subordinate only to Himmler. I had no disciplinary power nor judicial power over them. I could not give them leaves or issue awards. I was responsible only for the technical employment of these divisions, much as I might use a Yugoslav or Hungarian division."

These then were the broad outlines of the SS, this all-powerful "state within the state," as General Detzel called it. The Defense now seeks to divide this all-embracing unity of the SS into various totally separate components united only in the person of Himmler. He and three or four of his subordinates are alone made responsible for the millionfold crimes that were committed. But this contention violates both truth and sense. We are dealing in this Trial not with the murder of 10 men here or 20 there. In this Indictment is charged not only the murder of millions but a demonic plan of genocide, of the planned murder of whole nations, peoples, and races. The SS was the chosen instrument for this plan which "outheroded Herod." This plan could only be executed by the use of the whole of the SS, of every branch of the SS working in unison and in co-operation with each other. The evidence given in this Trial has shown that the crimes of the Nazi conspirators could not have been executed in an improvised way by sporadic criminal acts. They were carefully planned, prepared, and put into action through the SS and other criminal organizations. The men of the SS were particularly qualified for this plan of crime. Physically trained and selected, they were politically indoctrinated in Nazism and were committed to blind obedience to the commands of Hitler and Himmler and the rest of the Nazi leaders. "Orders must be sacred," said Himmler. Not only was membership voluntary during the first 16 years of the existence of the SS from 1925 on, it was subject to most careful selection in an endeavor to produce what the SS called a "male racial élite," a "super-stratum," a "band of definitely Nordic German men." SS men had to be fanatical Nazis of "Aryan" descent.

Much emphasis has been made by the Defense that during the course of the war the voluntary basis of the recruitment was replaced by compulsory drafting. The witness Brill gave evidence that "at the end of the war there were more draftees in the Waffen-SS than volunteers."

It may be helpful to the Tribunal if I very shortly discuss the evidence of that witness. While it is not questioned that at some stage during the war considerable numbers of men were arbitrarily drafted into the Waffen-SS, the date when this practice commenced

and the extent to which it was carried, as they have been given by the witness Brill, are both challenged.

He told you that the first 36,000 were conscripted between the autumn of 1939 and the spring of 1940. To say that the 36,000 were compulsorily drafted into the SS is deliberately misleading. When he was cross-examined before the Commissioner upon a similar statement he admitted that those 36,000 were already members of the Allgemeine SS which they had voluntarily joined. They were not conscripted: they were simply posted from one part of the SS to another. Figures of the subsequent conscripts which he gave were as follows: During 1942, 30,000; during 1943, 100,000; and during 1944, 210,000, making a total of 340,000. Even on these figures he is far short of justifying his statement that by the end of the war there were more conscripts than volunteers. He gave the grand total of the Waffen-SS as 910,000—a figure which included its strength in 1940 and all subsequent reinforcements, both voluntary and compulsory; 340,000 amounts to only just over one-third of that total.

On the question of the date at which recruits were first conscripted into the SS there is considerable evidence to refute this witness. In February 1940 Hess was instructing the Party offices to assist in the voluntary recruitment for the SS. In the decrees which he issued there was no suggestion of compulsory drafting. In April 1942 a recruiting pamphlet was emphasizing the voluntary basis of the Waffen-SS in these words, I quote:

> "Every youth in the National Socialist Reich knows that he must himself initiate proceedings in order to complete his military service in the Waffen-SS. That so many young Germans have volunteered for the Waffen-SS is a living testimonial of the confidence of today's young generation in the Waffen-SS, its spirit, and above all, its leadership" (3429-PS, USA-446).

The Soldier's Friend, a pocket diary for the German Armed Forces published in 1943, the year in which Brill would have you believe that 100,000 men were conscripted without choice, was describing the members of the SS as hopeful young men who had "voluntarily decided to join the ranks of the Waffen-SS." It stated, I quote:

> "Everyone has acquainted himself with the comprehensive manual for the Waffen-SS. The principal points are as follows:
>
> "1. Service in the Waffen-SS counts as military service. Only volunteers are accepted" (2825-PS, USA-441).

In April of the same year Himmler was directing the Defendant Kaltenbrunner on the admission of Sipo officials into the SS:

"I wish to make it clear again,"—he said—"I want an admission only if the following conditions are fulfilled:

"1. If the man applies freely and voluntarily" (2768-PS, USA-447).

And the *Organization Book* for 1943 explains that the Waffen-SS, by admitting volunteers for the duration of the war, makes it possible for these volunteers to fight in the battle for the evolution of the National Socialist idea. I am entitled also to make this comment upon Brill's evidence. You will remember that I have already referred you to the statements which this witness made upon the activities of the SS Division Leibstandarte which must, in my respectful submission, be regarded as perjured testimony. In view of the suspect nature of his evidence and of the evidence there is to contradict it, it is my submission that whatever may have been the extent of compulsory service in the SS it was very much less and came into being at a very much later date than he contends.

But whatever the truth of this matter may be, it is our submission that the fact that a number of men were compulsorily enrolled ought not and cannot afford this organization a defense. The instances of crime committed by the SS during the war are so widespread, so constant, and so vast that you are compelled to infer that the vast majority of its members, whether in the first place they joined voluntarily or otherwise, readily accepted the tradition of the SS and themselves became willing parties to its criminal activities. May I consider in outline only some of the evidence upon which that conclusion must be drawn.

You know already the form of education and training that the SS man received—a training for "the racial struggle" which Himmler commanded them to prosecute "without mercy." Racial theories, geopolitics, eugenics—that was their curriculum. *Mein Kampf* was their Bible. Their basic philosophy was expressed by Himmler:

"It must be a matter of course that the most copious breeding should be from this racial super-stratum of the Germanic people. In 20 to 30 years we must really be able to present the whole of Europe with its leading class. If the SS, together with the farmers . . . then run the colony in the East on a grand scale without any restraint, without any question about any kind of tradition, but with nerve and revolutionary impetus, we shall in 20 years push the national boundary 500 kms. eastwards" (1919-PS, USA-170).

The propagation of ideas like these could only have accustomed SS men to the conception of a world in which the destruction, enslavement, and degradation of "inferior" peoples were regarded

as an honorable duty. Pangs of conscience did not and could not trouble these men. The Tribunal will remember the words of Von dem Bach-Zelewski when he was asked whether the murder of 90,000 Jews by one small Einsatz group (to which, incidentally, the Waffen-SS provided most of the killers) was in keeping with Nazi philosophy. He said:

> "I am of the opinion that when, for years, for decades, the doctrine is preached that the Slav race is an inferior race and Jews not even human, then such an outcome is inevitable."

Not only were SS generals like Von dem Bach-Zelewski and Ohlendorf themselves infected by this poison. It is our submission that it did—and must have—poisoned the ordinary SS man who did the killing. Their extermination of Jews was regarded as, I quote: "A page of honor in our history."

Honor! Cold-blooded mass murder regarded as honor! Do we need further evidence to prove the type of man this filthy education bred? Long before they had enrolled themselves in the SS their members had been saturated with racial hatred and Führer worship. SS training was only a more advanced course. When they joined the SS, to whatever part they went they saw the practical application of all that they had learnt before. Everywhere, in every office, in every unit, murder was the trade. And wherever murder was to be done it was the members of the SS that were enrolled to do it.

The Ahnenerbe was a department of the SS. Its list of members included the names of over one hundred professors and other educated men—all SS members, who relied upon the murderous business of hundreds of other SS members to supply them with the bodies for their experiments and the specimens for their collections—bodies of commissars who were to be taken alive and then decapitated, care being taken that, I quote: "the head should not be damaged."

Professor Hirt wrote:

> "By procuring the skulls of the Jewish-Bolshevik commissars, who represent the prototype of the repulsive but characteristic sub-human, we have the chance now to obtain a scientific document" (085, GB-574).

The Office for the Consolidation of German Folkdom was an office of the SS, the office responsible for the awful crime of genocide and all that it entailed. The RSHA and the WVHA, controlling and responsible for the concentration camps, were manned by SS. The crimes of the SS in the concentration camps need no further mention except to emphasize that the inquiries instituted by the SS judicial system, of which the witness Morgen gave evidence, were not inquiries into mass murder but into cases of corruption by SS

officials. That witness is another whom I have already suggested to be unworthy of belief. How can the story of an investigation by an SS judge into the murders by Hoess at Auschwitz, which were interrupted by the advance of the Allies, be taken seriously? What further investigation could have been needed when Morgen himself knew all the details of the Auschwitz killings some time in 1943 or 1944? Do you doubt that had the Allies lost the war Hoess would still be committing mass murder in that concentration camp and that SS judges would still be investigating corruption and isolated crimes?

The Einsatzkommandos were primarily SS. They show in miniature the co-operation between the various branches of Himmler's system and the unity of the SS. Action Group "A" was composed as follows: Waffen-SS 34.4 percent; SD 3.5 percent; Criminal Police 4.1 percent; Gestapo 9.0 percent; Auxiliary Police 8.8 percent; other Police 13.4 percent.

The system of exterminating Jewry was handled by SS. The Warsaw ghetto is but one example. The deportation, murder, and robbery of the Poles and other peoples occupying territory which was required for German settlement was undertaken by SS. You will remember the Globocznik report, the action in which thousands of Poles were removed from their homes and 178 million Reichsmark acquired for the WVHA and which, in the words of Globocznik himself, was, I quote:

> "... carried out by order"—of the Reichsführer SS—"and only the decency and honesty as well as the surveillance of the SS men used for this purpose could guarantee a complete delivery" (4024-PS, GB-550).

One is surprised that he did not add *"pecunia non olet."*

The Waffen-SS came to be the spearhead of Nazi wars of aggression, particularly in the invasion of the Soviet Union, and exemplified the tyranny and slaughter which were inherent in Nazi domination. I quote:

> "We will never let that excellent weapon, the dread terrible reputation which preceded us in the battles of Kharkov, fade, but will constantly add new meaning to it."

So said Himmler to the officers of three SS divisions in Kharkov in 1943 (1919-PS, USA-170).

The Waffen-SS succeeded in constantly adding new meaning to its reputation for terror. Numerous instances have been submitted to the Tribunal of the commission of war crimes and crimes against humanity by units of the Waffen-SS. They are fresh in the Tribunal's mind and I will not recapitulate them. I would only remind the Tribunal that some of the worst atrocities took place in 1943 and 1944, at which time a proportion of the Waffen-SS were conscripts.

How can it be contended that the members of the SS, and particularly of the Waffen-SS, were merely soldiers—soldiers who had no knowledge and took no part in these crimes? How can it be said that it was not they whose aims were criminal? Wherever we find Nazi crimes being committed we find also SS men involved. Always it is said that these SS men were something special, members of the SD or some other particular branch, members of the SS who had been drafted away to serve with special units such as the Einsatzkommandos, members of the SS who were not really SS men at all, but doctors or Police. Can this be really so? Let us ignore the evidence of the concentration camps, of the Einsatzkommandos, of the vast and brutal crimes against the populations of their invaded territories, of the mass exterminations of Jews throughout half the countries of Europe, of the legion instances of individual crime and sadism, of the legion other instances of murder in battle, and of every other breach of the laws of warfare. Let us ignore the evidence of all these crimes, although each one of them was committed by different SS men in different towns and villages throughout the length and breadth of the Greater Reich. Let us ignore them although they did not constitute one sudden wave of crime but were being done day after day over the years. Let us ignore the fact that in almost no instance of crime of which we have heard were any other than SS men involved. Let us ignore all this if you wish. Without it the criminality of the SS, from the highest to the lowest, is established by the records which we have of those three speeches that Himmler made to the officers of his SS units.

In April of 1941 he was talking to all of the officers of the SS Division Leibstandarte. In October 1943 he was addressing his major generals at Posen. In the same month the commanding officers of every regiment in three of his SS divisions were listening to what he said at Kharkov. Those speeches have been quoted to you again and again and you know the sentiments that were expressed and the subject-matter that they covered. Will you try to imagine a general from your own countries talking to all the officers of one of your own divisions of hauling into slavery "thousands, tens of thousands, hundreds of thousands" of people; of shooting "thousands of leading Poles"? Will you try to imagine a British or an American or a Soviet or a French army commander telling his major generals:

> "What happens to a Russian, to a Czech, does not interest me in the slightest.... Whether 10,000 Russian females fall down from exhaustion while digging an anti-tank ditch interests me only insofar as the anti-tank ditch for Germany is finished" (1919-PS, USA-170, Page 23).

Or saying this:

> "I also want to talk to you, quite frankly, on a very grave matter.... I mean the clearing out of the Jews, the

extermination of the Jewish race. It is one of those things it is easy to talk about—'The Jewish race is being exterminated,' says every Party member, 'that is quite clear, it is our program, elimination of the Jews, and we are doing it, exterminating them.' And then they come, 80 million worthy Germans, and each one has his decent Jew. Of course the others are vermin, but this one is an 'A 1' Jew. Not one of all those who talk this way has witnessed it, not one of them has been through it. Most of you must know what it means when 100 corpses are lying side by side, or 500, or 1,000. To have stuck it out and at the same time—apart from exceptions caused by human weakness—to have remained decent fellows, that is what makes us hard" (1919-PS, USA-170, Page 65).

Can you see him telling all the commanding officers of one of his divisions:

"Anti-Semitism is exactly the same as delousing. Getting rid of lice is not a question of ideology, it is a matter of cleanliness. In just the same way anti-Semitism for us has not been a question of ideology but a matter of cleanliness" (1919-PS, USA-170).

If you can imagine so much, can you imagine what you would say of the officers and of the men that they commanded? Is it possible that officers and men in these Waffen-SS divisions who could be spoken to in such a way were high-minded, clean-living, decent, and honorable soldiers? Such men, be they from Germany or from any other country in the world, would not tolerate these words. Those speeches have become hackneyed enough during the course of this Trial, but they never lose their significance. They show that every member of those SS units was a prototype of his SS Führer. If it were not so the Defendant Göring could not have said, after telling Mussolini the horrors of Germany's methods in fighting the partisans, I quote:

"Members of the Party discharge this task much more harshly and efficiently.... The SS, the guard of the old fighters of the Party, who have personal ties with the Führer and who form a special élite, confirm this principle" (729, GB-281).

If it were not so the Defendant Hess could not have written:

"The units of the Waffen-SS... are more suitable than other armed units for the specific tasks to be solved in the Occupied Eastern Territories due to their intensive National Socialist training in regard to questions of race and nationality" (3245-PS, GB-267, Page 354).

We know what Hitler had in mind as the future role of the Waffen-SS State Police: to impose German authority in the conquered countries; State Police who would never fraternize with the proletariat and underworld. That was their destined role which all the Army knew because, by order of the OKW, it had received the "greatest publicity." We know enough of the Nazi State Police, of the education and training of the Waffen-SS and the practical application of that training during these years of war to fit them for the task that lay ahead of them, to know also the sort of methods which they would have employed. It is those men, the men who were intended and had been trained to police and terrorize Europe, who compose the organization of the SS which we ask you to convict as criminal.

Such are the main considerations in connection with these three organizations, the Corps of Political Leaders, the SA and the SS to which I desire to draw your attention. It was these organizations which provided the machinery by which the crimes that these defendants conceived were executed. These three organizations were not separate and distinct from each other, as their counsel have attempted to portray them. It was their members who together constituted—and still do—the fundamental and dangerous core of National Socialism. As the separate branches of the National Socialist élite their aims and purposes were the same and they worked and co-operated with each other using the same methods which were criminal for all to see. From the outset this was so and continued so until the end. Nothing more clearly demonstrates these things than the evidence of how the National Socialist Party and Government debased the concepts of law and order and corrupted the judicial practice of their courts in order to protect themselves and their followers in the criminal courses they were pursuing.

Hardly had the Nazi Government come to power when the Nazi ministers, Nazi police, and Nazi judiciary were condoning violence and murder committed by the SA and the SS and the Gestapo. And for what reasons—reasons which must have demonstrated to all Germany, and must demonstrate to all the world today, the very rottenness of National Socialism:

> "As the deed did not originate from ignoble motive"—I quote—"but rather served the achievement of an exceedingly patriotic aim and the advance of the National Socialist State, the quashing of the proceedings . . . does not seem incompatible with the orderly administration of criminal justice" (D-923, GB-615).

Such was the opinion of the Public Prosecutor to the Provincial Court in Nuremberg in respect of the SA men who had beaten a

Communist to death—beaten him until the soles of his feet were so swollen, I quote:

"... owing to the mass of blood gathered there, that after the blood had been drained off by incision, pockets nearly the size of a fist were formed (D-923, GB-615).

In Munich the State Minister of the Interior was giving similar reasons for quashing proceedings against SS guards in Dachau who had beaten a prisoner on the head until he died, I quote again:

"As a reason it is pointed out that the conducting of investigations would cause great harm to the prestige of the National Socialist State, since these proceedings would be directed against members of the SA and SS, and thus the SA and SS as the chief protagonists of the National Socialist State would be immediately affected" (D-926, GB-568).

Nazi judges were suspending proceedings against members of the SA in agreement with the supreme leadership of that organization. I quote again:

"The deed and intention of the SA men were only aimed at the well-being of the National Socialist movement. Political reason and the purity of intentions is thus beyond doubt" (D-936, GB-616).

When judges not yet accustomed to these new conceptions of law did convict SA guards who, I quote, "not only attempted to wring confessions from inmates but acted in a sheer lust for torture," they were at once expelled from the Party; the prosecutor who happened himself to be a member of the SA was warned that he should resign and the Gauleiter wrote to the Supreme Court advising that a pardon should be substituted for the sentence that had been imposed.

Can there be any doubt that candidates for membership of these organizations did not know that membership afforded the license to murder?

Nor were these concepts of law confined to the State and Party courts; the military could not resist anything so attractive. By 1939 a military judge was granting to an SS man extenuating circumstances, I quote:

"... because he was induced to participate in the shooting by a corporal handing him a rifle. He was in a state of irritation owing to numerous atrocities committed by Poles against persons of German race. As an SS man particularly sensitive to the sight of Jews and to the hostile attitude of Jewry to the Germans, he therefore acted quite thoughtlessly in youthful rashness" (D-421, GB-567).

Those SS soldiers had been sentenced to imprisonment for "manslaughter" which the army commander refused to confirm. It was for "manslaughter" of a kind known only to National Socialists

who, as we have seen in this Court, display a curious sensitiveness to the word "murder." This they called manslaughter:

> "After about 50 Jews, who had been used during the day to repair a bridge, had finished their work in the evening, these two men drove them into a synagogue and shot them all without reason" (D-421, GB-567).

Let me conclude by reminding you of the opinion of the Supreme Court, the supreme guardian of National Socialist honor and discipline, to whose august authority and jurisdiction the members of all these organizations were subject. Of the murders committed during the 1938 demonstrations by Hoheitsträger and members of the SA and SS, the investigation of which had been entrusted to the Secret State Police and Party jurisdiction of Gauleiter and other Political Leaders, it was pleaded that, I quote, "in such cases as when Jews were killed without an order or contrary to orders, ignoble motives could not be determined." The purpose of those proceedings in the Party Court were, I quote again, "to protect those Party comrades who, motivated by decent National Socialist attitude and initiative, had overshot their mark" (3036-PS, USA-332).

In those few lines you have the secret of all the death and suffering, the horror and tragedy, that these defendants and the members of these organizations have brought upon the world. You see to what depths of evil they corrupted the human conscience. No ignoble motive—the murder of women and children through "decent National Socialist attitude and initiative." Such was the National Socialist creed which the members of these organizations fanatically accepted, the creed which—can one doubt—they still cherish and, given the opportunity to do so, would revive.

With regard to the High Command and General Staff, it is not my intention to trespass on the ground which will be covered so well by my colleagues. Nevertheless I want to state, as clearly and emphatically as it may be stated, that the British Delegation unreservedly joins them in the request for the condemnation of the group indicted under that name.

The men involved have joined in wars which they knew were unjust wars of aggression. They have borne essential parts in the deeds which in the hands of their immediate perpetrators are undeniably war crimes and crimes against humanity. Yet they protest their innocence.

Our case against them has as clear a basis on the facts of this case as in the lessons of history.

They carried out orders which on the admission of many of them bit deep into the remnants of their consciences. They knew that they were doing what was wrong, but they now say "Befehl ist Befehl"—an order is an order.

All decent men find it difficult to blame others for absence of moral courage—they are only too conscious of their own failings in that direction. But there comes a point when, faced with crimes which are obvious murder or barbarity, there is a higher duty. Even Dr. Laternser admitted this was so. His suggestion to the witness Schreiber that he ought to have protested at the Army Staff's proposals for bacteriological warfare came strangely on behalf of these men whose very defense has been to declare the impossibility and uselessness of protest. What nonsense—what utter nonsense—is this which you have been asked to listen to by these defendants and their generals when their own counsel, to discredit a witness, must ask the very question which the Prosecution have been asking of themselves since the day this Trial began. In fairness to all military tradition it should not go forth that soldiers have sheltered behind the letter of a command from facing moral problems—and deciding them, rightly or wrongly, as moral problems. Great captains are not automata to be weighed against a rubber stamp. I need not traverse the history of our military figures—the philosophy of Montrose, the brooding thoughts of Marshal Ney, the troubled heart of Robert E. Lee in 1861—to find examples. Two of the greatest names in German military history spring to one's mind: Von Clausewitz leaving the Prussian Army to serve in that of Russia; Yorck von Wartenburg making his decision of neutrality—both put what they deemed the needs of Europe and humanity above the orders of the moment. How much more clear and obvious was the duty when the work of drafting, issuing, and carrying out the Nacht und Nebel Decree, the Commando Order, the Commissar Order, Hitler's order to murder our 50 Air Force officers, meant the defiling of every idea which every soldier cherishes and holds dear; when—as all of them who ever served upon the Eastern Front could see with their own eyes—they were asked to support and co-operate in a calculated system of mass-extermination and utter brutality.

These men, of all men, knew their leader to be a callous murderer, yet for years they had met in conference after conference to sit at his feet and listen to his words. They fed his lust for power and enslavement with the best of their professional skill. While the defenseless peoples of the East, the men, women and children of Poland, of the Soviet Union, and of the Baltic states, were being deliberately slaughtered and deported into slavery to allow for German "Lebensraum," these men talked of the necessities of war. When their own cities were bombed and Germans killed, they called it murder. Only in July 1944, when Hitler's star was dimmed, did three Field Marshals and five Colonel Generals recognize that he was murdering also their own country and took action. When that star was rising in victory they had

hailed it and ignored the blood-red colour of the clouds from which it rose.

So much for the facts and the merits. It is perhaps permissible to say one word on the construction of the Charter. The use of the two words "group" or "organization" surely connotes that the entity in question may have been either formally organized by the Nazis or selected by the Prosecution as a group which existed in living reality. This group was united by its special knowledge given at so many conferences, and voluntarily bound by the transmission of those criminal orders. For that reason we ask that it should be condemned.

With regard to the Reichsregierung also I only desire to make it clear that the British Prosecution is again asking unhesitatingly for a conviction. Beyond this I wish to make two points only.

Some question has been raised as to the position of those known Nazis who joined the Cabinet in 1933. If anyone in that Cabinet did not know to what he was committing himself on 30 January 1933, he had a very good idea in March when the Jews were attacked. His knowledge increased in April, when the whole nation was organized in boycotting the Jews and the official figures of 20,000 people under arrest were given in the German Press. In June 1934 he knew that murder was being used as an instrument of policy. In 1935 and 1936 he knew that the foreign policy was being carried on at the calculated risk of war.

The other point on which I want to comment is the picture, given by the Defense, of ministers in complete ignorance of what was going on. In my submission, government does not function like that. Whether totalitarian or democratic, a government can only act by dealing with human beings. The lives of human beings are not lived in watertight compartments; their infinitely varying interests are inextricably interlocked. The most completely authoritarian minister must, as indeed Dr. Kubuschok in his speech was disposed to agree, consider the repercussions of his actions on the acts of his colleagues. In other words, he must know what is going on.

It is because the men of this group knew what was going on, supported it and took the principal positions and richest rewards of the State for themselves as the price of such support, that we ask for the conviction of the organization today.

I have endeavored to show how the SD and the Gestapo fit into the scheme of the Nazi State. As one would expect, the evidence that I have mentioned introduces them in innumerable ways. Beyond once more emphasizing my support of my colleagues' plea for their conviction, I do not intend to comment further upon those organizations.

My Lord, I am deeply conscious that one of the greatest difficulties, and not the least of the dangers, of this Trial is that those of us who have been engaged day in and day out for 9 months have reached the saturation point of horror. Shakespeare attempted to picture that saturation point in the memorable lines:

"Blood and destruction shall be so in use
And dreadful objects so familiar
That mothers shall but smile when they behold
Their infants quartered with the hands of war;
All pity chok'd through custom of fell deeds."

It is only when we stand a little apart from what has been our daily companion for 40 weeks that we realize that the "domestic fury and fierce civil strife," the results of which Mark Anthony was prophesying, are an inconsiderable bagatelle beside the facts which we have had to consider.

It is not merely the quantity of horrors—although these organizations have been the instruments of death for 22,000,000 people—it is the quality of cruelty which produced the gas chambers of Auschwitz or the routine shooting of Jewish children throughout a continent claiming to be civilized. There is not one of these organizations which is not directly connected with the sorry trade of murder in a brutal form. Who can doubt that the Reich Cabinet knew of the euthanasia used to conserve the physical resources of Germany for war? It is beyond question that the High Command and General Staff passed on these orders of which you have heard so much and which are all reduced in the end to plain murder; the Leadership Corps shared in killing Jews and ruining the bodies of slave laborers. I have simply to mention the SS and the crimes come unbidden into the mind without any words of mine. Conniving, assisting, and finding a reason for these crimes were the SD and the Gestapo. The SA trained its Baltic recruits to reach the SA standard which came to fruition in the ghetto of Kaunas or the pit at Vilna.

The late President Woodrow Wilson once said:

"It is indispensable that the Governments associated against Germany should know beyond a peradventure with whom they are dealing."

If Europe is to be cleansed of Nazi evil it is indispensable that you and the world should know these organizations for what they are.

It has been our somber task to assist you to this knowledge; having done so, we sometimes wonder if the stench of death will ever wholly pass from our nostrils. But we are determined to do our utmost to see that it will pass from Germany, and that

the spirit which produced it will be exorcised. It may be presumptuous for lawyers, who do not claim to be more than the cement of society, to speculate or even dream of what we wish to see in its place. But I give you the faith of a lawyer. Some things are surely universal: tolerance, decency, kindliness. It is because we believe that there must be a clearance before such qualities will flourish in peace that we ask you to condemn this organization of evil.

When such qualities have been given the chance to flourish in the ground that you have cleared, a great step will have been taken. It will be a step towards the universal recognition that

> "... sights and sounds all happy as her day,
> And laughter learnt of friends, and gentleness,
> And hearts at peace...."

are not the prerogative of any one nation. They are the inalienable heritage of mankind.

THE PRESIDENT: The Tribunal will adjourn.

[A recess was taken.]

MR. THOMAS J. DODD (Executive Trial Counsel for the United States): Since the 20th day of November 1945, this International Military Tribunal has been in almost continual session. In these many months, a record of more than 15,000 pages has been compiled. Over 300,000 affidavits have been submitted; about 3,000 documents have been offered and oral testimony has been heard from some 200 witnesses.

This great mass of evidence, oral and written, almost exclusively of German origin, has established beyond question the commission of the crimes of criminal conspiracy, aggressive war, mass murder, slave labor, racial and religious persecutions, and brutal mistreatment of millions of innocent people. The four prosecuting powers have indicted and hold responsible for these frightful crimes as individuals the 22 defendants named in the Indictment.

But the four prosecuting powers, recognizing that the 22 individual defendants could not by themselves alone accomplish the execution of these enormous crimes, have also named in the Indictment the Nazi organizations as the principal media by and through which these transgressions were effected. These organizations—some Nazi-created, some Nazi-perverted—were the agencies upon which the defendants relied and through which they operated for the accomplishment of their criminal purposes over the complacent people of Germany and over the conquered peoples of Europe.

The named organizations fall into two classes: in the first class are those which are peculiarly Nazi creations, having no counterpart outside the Nazi regime and which had no intrinsically legitimate purpose. This group includes the Politische Leiter, the SA, and the SS. In the second class are those which existed in one form or another before the Nazi regime, but which were corrupted by the Nazis. This group includes the Reich Cabinet, the High Command and General Staff, and the Gestapo. As to this second class, it is not our contention that the institutions themselves were basically criminal, but rather that they became criminal under Nazi domination, although, by its very nature as a secret political police system, the Gestapo was the most easily adapted to criminal purposes and became one of the most effective of all instruments of Nazi criminality.

It would be a mistake to consider these organizations named in the Indictment as isolated, independently functioning aggregations of persons, each pursuing separate tasks and objectives. They were all a part of, and essential to, the Police State planned by Hitler and perfected by his clique into the most absolute tyranny of modern times. That Police State was the political Frankenstein of our era, which brought terror and fear to Germany and spread horror and death throughout the world. The Leadership Corps of the Nazi Party was its body, the Reich Cabinet its head, its powerful arms were the Gestapo and the SA, and when it strode over Europe its legs were the Armed Forces and the SS. It was Hitler and his cohorts who created this police state monster, and it brought Germany to shame and the nations of Europe to ruin.

It would likewise be erroneous to view the structure of this police system as something casual, or its growth and development as normal political phenomena. For it was planned from the earliest days by the conspirators. The Nazi "old fighters" had a design for despotism. They built the SA at the outset as a private band of strong-arm men to wield the club against the political opponent, and the whip against the Jew. They established the SS as the dread guard of the Führer and of themselves. When they seized power they abolished police protection and substituted police persecution as the mission of the Gestapo. They wiped out all semblance of free government and set themselves up in the Reich Cabinet with plenary powers. They depraved the highest traditions of military ethics and substituted "willing tools" for ranking men at arms. They obliterated all other political parties and fastened on the German people a political straightjacket in the form of the Leadership Corps.

Deprive the Nazi conspirators of these organizations and they could never have accomplished their criminal aims. Take away the SA and they would have lost the mastery of the streets; take

away the SS and they would have had no concentration camp system; take away the Gestapo and they would have had no means of illegal arrest and unlimited detention; take away the Reich Cabinet and they would have had no subservient law-making body; take away the truckling military men and they could not have secretly planned their attacks or ultimately waged their wars.

The provisions of the Charter empowering the Tribunal to declare a group or organization criminal, and the functions of the Tribunal under those provisions, have been dealt with in the legal arguments and memoranda previously submitted to the Tribunal by the Chief Prosecutors. At that time, in response to the request of the Tribunal, Mr. Justice Jackson stated the grounds which, in our view, warrant declaring a group or organization criminal.

Before now undertaking to summarize the evidence, it may be well to restate those tests:

(1) It must be a "group" or "organization" within the meaning of Article 9 of the Charter, that is to say, it must be an aggregation of persons associated in some identifiable relationship, having a collective general purpose, or pursuing a common plan of action.

(2) Membership in the organization must have been basically voluntary, that is to say, the membership of the organization as a whole, irrespective of particular cases of compulsion against individuals or groups of individuals within the organization, must not have been due to legal compulsion.

(3) It must have participated directly and effectively in the accomplishment of the criminal aims of the conspiracy, and it must have committed crimes against the peace or war crimes or crimes against humanity, as charged in the Indictment.

(4) The criminal aims or methods of the organization must have been of such a character that its membership in general may properly be charged with knowledge of them.

(5) Under the Charter the Prosecution must also establish that at least one of the defendants in the dock, who is a member of the organization, is guilty of some act on the basis of which the organization may also be declared criminal.

These are the tests of criminality which the American Prosecution has conceded must be met with respect to each organization before a declaration of criminality as to that organization is warranted. My distinguished colleague, Sir David Maxwell-Fyfe, has discussed in his address the evidence against most of the organizations; and the Russian and French Chief Prosecutors will review specific crimes committed by these groups. I shall not discuss the High Command since it is to be the subject of a special argument by a member of the American staff. I shall, with the consent of the Tribunal, address my remarks to the general proposition of

whether the Prosecution has sustained the burden of proving by competent evidence that each of the named organizations is criminal under all of the principles stated.

The evidence clearly establishes that the five organizations in question are groups or organizations as we interpret these terms in the Charter—that is, each is an aggregation of persons associated in an identifiable relationship, having a collective general purpose.

That the Political Leadership Corps were an identifiable aggregate, had a common purpose, and functioned as a group, is clear. Ample evidence as to the structure and functions of the Leadership Corps of the Party is to be found in Nazi publications—the *Organization Book of the NSDAP; Der Hoheitsträger,* the official magazine of the Leadership Corps; in the chart of the Leadership Corps, and a chart of the Party itself. This group, some 600,000 strong, had special uniforms, carried special membership cards, enjoyed countless special privileges. The term "Politische Leiter" is not one we have invented for the purpose of giving an appearance of cohesion to a number of unrelated individuals performing similar, but un-co-ordinated, functions in the Party. The *Organization Book of the NSDAP* itself deals with all these Party workers as a unit under the designation "Politische Leiter." It shows the hierarchical structure under which they were organized and the manner in which directives were passed down automatically through the chain of command to the lowest level and were carried into effect by all members of the group. It shows further that in the functioning of this corps, the Leadership Principle reached perfection. All Party workers were bound by identical oaths to unconditional obedience to the Führer and to all leaders appointed by him. At each level, regular and frequent conferences were held, and the higher and lower levels met together periodically for discussions of policy. The Leadership Corps constituted a perfect pyramid in which every stone at every level was necessary to maintain the whole structure. It had one single, common purpose—the maintenance of the organization and ideology of the Nazi Party.

The Indictment defines the Reich Cabinet as consisting of three classes of persons:

(1) members of the ordinary Cabinet after 30 January 1933; (2) members of the Council of Ministers for the Defense of the Reich; and (3) members of the Secret Cabinet Council. These three classes together make up the group of 48 members which we are prosecuting under the designation "Reichsregierung." Each of these, taken by itself, constitutes an identifiable aggregate working toward a common end. The ordinary Cabinet of any government is as clear an example of a group as could be found. The ordinary Cabinet of the Nazi Reich did not differ in that

respect from similar institutions in other governments. It met frequently as a Cabinet in the early days of the Nazi regime, and when meetings thereafter became uncommon, it continued to function as a group in passing on decrees and laws through the procedure of circulating drafts of proposed enactments to all its members. An example of this procedure is before the Tribunal in the form of a memorandum from the Defendant Frick to the Chief of the Reich Chancellery. The same cohesion and unified function is found in the Council of Ministers for the Defense of the Reich, which was established in 1939. Like the ordinary Cabinet, its members consulted together in actual meetings, as shown by the minutes of such meetings in September, October, and November 1939. And, like the ordinary Cabinet, it also functioned by using the circulation procedure, a typical instance of which is the letter from Dr. Lammers of 17 September 1939 to members of the Council of Ministers for the Defense of the Reich. The Secret Cabinet Council, an advisory body on foreign policy, consisting of eight members, was an identifiable unified aggregation, as appears from the decree which created it. The inclusion of these three classes under the single designation "Reichsregierung" is not an attempt to create an artificial relationship among three separate and independent entities. Actually, the three were collectively as much a group as each was independently, for the Council of Ministers for the Defense of the Reich and the Secret Cabinet Council were really committees formed out of the ordinary Cabinet. The decrees creating these two committees demonstrate that the entire personnel was composed of individuals who were in the ordinary Cabinet. Not only in personnel, but in action, functions, and purpose as well, the ordinary Cabinet and its committees were unified. Members of the ordinary Cabinet who were not members of these committees, were nevertheless present at meetings of the Council of Ministers, as shown by minutes of such meetings, and under the circulation procedure received drafts of decrees prepared by the Council of Ministers. This aggregation—the Cabinet and committees formed of some of its members—had a single collective purpose, that of governing the Reich in such a fashion as to carry out the schemes of the Nazi conspirators.

The SA, which was created in 1920, is one of the simplest examples of the type of group or association contemplated by the provisions of the Charter. It was defined by a German law as a component of the Party, having its own legal personality, and it was characterized by the *Organization Book of the NSDAP* as a distinct entity. It had an identifiable membership of from 1,500,000 to 2,000,000 members, bound together by common standards, wearing a common and distinctive uniform, having

common aims and objectives, and carrying on common activities. The general purpose of the SA, to which the whole membership was devoted, was stated in the *Organization Book of the NSDAP*: "to be the bearer of the National Socialist armed will," and, according to the same Party manual, a member had to withdraw if he no longer agreed with the SA views or was not in a position to fulfill completely the duties imposed upon him as a member of the SA.

Like the SA, the SS was beyond question a unified organization. It was established by German law as a component of the Party having its own legal personality. It was described in the *Organization Book of the NSDAP* as a "homogeneous firmly welded fighting force bound by ideological oaths." It had a clearly identifiable membership which rose to about 600,000 toward the end of the war, composed of persons who met the same basic uniform standards of race ideology. Despite its many functions and activities and its numerous departments and offices and branches, it was an integrated and unified organization and it was, according to Himmler's tirade to the SS Gruppenführer on 4 October 1943: "One bloc, one body, one organization." It had of course its own uniform and enjoyed special privileges, while pursuing the general purposes of the Nazi conspirators, running all the way from neighborhood bullying through political, racial, and religious barbarities to the waging of wars of aggression and the most violent and revolting crimes against humanity.

From its earliest days, the Nazis always regarded that portion of the police forces called the "Gestapo," or "Secret State Police," as a separate group, a clearly identifiable aggregate performing a common function. The very purpose of Göring's decree of 26 April 1933, establishing the Gestapo in Prussia, was to create in that province a single body of secret political police, separated from the other Prussian police forces, an independent force having its own particular task, on which he could entirely rely. The same motives led to the establishment of similar identifiable groups of secret political police in other German provinces. The steps by which these groups were all consolidated into a single secret political police force for the whole Reich are fully detailed in the decrees and laws which have been cited to the Tribunal. When the RSHA was created in 1939, the Gestapo was not dispersed, but became a distinct department of that central office, as shown by the chart of the RSHA introduced in evidence, and by the testimony of the witnesses Ohlendorf and Schellenberg. They easily estimated the number of persons in the Gestapo at from 30,000 to 40,000.

Throughout these proceedings, the Gestapo and the SD have been considered together, due to the fact that criminal enterprises

with which each is chargeable were supported, to a greater or lesser degree, by both. The Indictment charges the Gestapo with criminality as a separate and independent group or organization. The Indictment includes the SD by special reference as a part of the SS, since it originated as part of the SS and always retained its character as a Party organization, as distinguished from the Gestapo which was a State organization. The SD, of course, had its own organization, an independent headquarters with posts established throughout the Reich and in occupied territories, and with agents in every country abroad. It had a membership of from 3,000 to 4,000 professionals assisted by thousands of honorary informers, known as V-men, and by spies in other lands; but we do not include honorary informers who were not members of the SS. Nor do we include—and I insert this—members of the Abwehr who were transferred to the SD toward the end of the war, except insofar as such Abwehr members also belonged to the SS.

Now, if it is asked where the ubiquitous SD man is to be found, the answer is not at all difficult, although some of the testimony and arguments made before the Tribunal have been confusing, we fear.

Until 1939 the SD man was always to be found in the head office of the SD, of the Reichsführer SS, or in the various regional offices of the SD throughout the Reich. During that period the SD was repeatedly identified as a department of the SS in SS organization charts and plans and bylaws and decrees issued by the Government. During this period the SD was the political intelligence agency of the SS, the Party, and the State, and it provided secret political information to the executive departments of the State and Party, but particularly to the Gestapo. After 1939 the SD man is to be found in Offices III and VI of the RSHA, and in the various regional SD offices within Germany, in the occupied territories, and in the Einsatz groups of the Security Police and the SD in areas close behind the front.

In the course of the argument some confusion has also arisen over the characterization of the RSHA, WVHA, Department Eichmann, and Einsatz groups. The RSHA was a department of the SS, and substantially all of its personnel belonged to the SS. It was under the command of SS Obergruppenführer Kaltenbrunner. In addition to the SD, which was always an SS formation, it included the Gestapo and the Reich Criminal Police, both of which were State agencies. For this reason the RSHA was also carried as a department of the Reich Minister of the Interior.

The WVHA was strictly another SS department. The WVHA was under the leadership of SS Obergruppenführer Pohl, who was

charged with the administration of concentration camps and the exploitation of the labor of the inmates.

There was no Department Eichmann as such. Eichmann was simply the head of the department of the Gestapo which was charged with matters pertaining to the Churches and to the Jews. It was this department of the Gestapo which had primary executive responsibility for the rounding-up of the Jews of Europe and the committing of them to concentration camps. The Eichmann Department, so-called, within the Gestapo, was no more independent of the Gestapo than any other department under Müller.

The Einsatz groups of the Security Police and SD—and it is very important, we think, that the full title be held in mind at all times—were the offices of the Security Police and SD operating in the field behind the Army. When police control had been sufficiently established in newly occupied territories, the mobile Einsatz groups were eliminated and they became regional offices under the commanders of the Security Police and SD in occupied territories. The Einsatz groups were a part of the Office of the Security Police and SD, the RSHA, and as such were a part of the SS, limited only by the fact that some personnel assigned to the groups were not members of the SS.

In 1939, the main offices of the SD and the Gestapo were consolidated in the RSHA, but the SD at all times preserved its independent identity.

Surely the Prosecution has met the requirements of group proof as to these organizations, not only by the standards which it has imposed upon itself, but as well by every ordinary rule of reason and experience.

Membership in the Leadership Corps was indisputably voluntary. No one was compelled to join the NSDAP, much less to become one of the leaders of the Nazi Party. We do not doubt that many joined the Leadership Corps for business, social, or other selfish reasons. These are the commonplace motives for cheap political prestige, but they cannot and do not amount to legal compulsion.

No one was drafted into the Reich Cabinet. Moreover, some of its members resigned when they found themselves in conflict with its aims and objectives. Schlegelberger left because of the infringement of the independence of the judiciary; Schmitt resigned because he was convinced that Hitler's course was the way to war; Eltz von Rübenach resigned because of Hitler's policy against the Christian Churches. A place in the Nazi Cabinet circle with its titles and tinsel was the high ambition of most of the Nazis. Competition for these places was fierce and any present

effort to fend off a declaration of criminality against this group with a pretense of membership by force is ludicrous.

So free of compulsion was membership in the SA that the *Organization Book of the NSDAP,* as late as 1943, urged SA men to withdraw from the organization if they felt they were unable to agree with the aims and ideology and to fulfill all the duties imposed upon them. Party members were not forced into the SA lists. The controls and the disciplines imposed on SA members within the framework of the organization have nothing to do with the voluntary character of the membership itself. The willing submission of the SA man to the SA Command is not the same thing as compulsory and involuntary entry into the organization.

Applicants for the SS not only were volunteers, but in addition they had to meet the strictest standards of selection, as is illustrated in the *SS Soldier's Manual,* and by Himmler's insistence on free and voluntary application for membership as set out in his letter of 1943 to Kaltenbrunner. The SS characterized itself as an élite and select corps, advertised that it carefully weeded out every applicant who did not conform to its racial, biological, and ideological standards, and made it plain to everyone that unusual qualifications were required for membership. Such in fact was Himmler's boast to the Wehrmacht when he said, and I quote:

> "Should I succeed in selecting from the German people for the organization as many as possible who possess this desired blood, and in teaching them military discipline and the understanding of the value of blood and the entire ideology resulting from it, then it would be possible actually to create such an élite organization as should successfully hold its own in all cases of emergency" (1992-A-PS).

The "élite" were required to establish Nordic descent: In the case of an officer applicant as far back as the year 1750, and for regular applicants to the year 1800. In addition, unusual physical standards of height and odd requirements of Nordic appearance were set up and the political and ideological background of every "élite" candidate was carefully scrutinized. It is highly significant that we have proof of insistence on these racial and ideological qualifications as late as 1943, even in the Waffen-SS. It has been argued that because some men were conscripted into the Waffen-SS in the last desperate stages of the war, the organization as a whole was not a voluntary one. Those who were actually forced into divisions of the Waffen-SS may have an adequate defense in subsequent hearings, but we insist that compulsion born of a frantic effort to stave off defeat in the closing hours of the war does not change the essentially voluntary aspect of the membership as a whole. Whatever pressures may have been exerted to expand the

membership of this organization, it originated and remained basically voluntary and selective.

The SD as a part of the SS was composed of SS men with special qualifications. The deeds of this organization best explain the nature of these special qualifications, for the record in this case is replete with horrible tales of their doings. The SD man was simply a surcharged SS man. If the membership of the SS was basically and fundamentally voluntary, as we claim it was, then it follows automatically that the SD membership was likewise voluntary.

The Gestapo was at all times a State organization, a branch of the Government similar in all usual respects to other branches of the Government. In considering the voluntary character of its membership, all other considerations are secondary to this basic determination of the Gestapo as an agency of State. If membership in the Gestapo was compulsory, membership in the Order Police, and in the department of safety, and in the department of finance must have been compulsory too. When the Gestapo was created following the seizure of power, it is true that many members of the previously existing political police system of the various Länder were transferred to it. But they were under no legal compulsion to join. As the Gestapo affiant Losse stated, and I quote from his affidavit: "If they had refused, they would have had to reckon with a dismissal from the service without pension, so that unemployment would have threatened them." The witness Schellenberg stated that new members of the Gestapo were taken on a voluntary basis. Any one of them could have resigned and sought employment in other branches of the Government or in positions disassociated from Government service. To become a member of the Secret State Police, a person applied for a position just as in any other branch of Government. The witness Hoffmann, in testifying before the Commission, stated that he applied for a job in three branches of the Government, of which the Gestapo was one. The Gestapo accepted his application and in that way he became a member of the organization. There was nothing to prevent a Gestapo official from resigning his position if the aims and activities and methods of the organization became repugnant to him. The witness Tesmer testified before the Commission that if an officer refused to carry out a criminal order he probably would be removed from his employment. Even after the war began, when all governmental officials were more or less frozen in their positions, members of the Gestapo were able to resign. The witness Tesmer himself resigned from the Gestapo during the war, and the witness Straub testified that a person could resign his position in the Gestapo at the risk of going to the front on active military service. Surely this was not compulsion in any legal sense. The sacrifices which members of the political police might face upon resignation, such as loss of

seniority and forfeiture of pension rights, may have seemed decisive to those who remained in the Gestapo, but such considerations could under no circumstances be construed as legal compulsion justifying continued membership in an organization of such notorious criminality. There may be particular instances where some members of the Army Secret Field Police were later transferred from the military to the Gestapo. In such instances, these individuals may have gained on the basis of military orders a personal defense to the crimes committed by the Gestapo during the period of their membership. But such special instances, justifiable in subsequent proceedings, can in no way affect the basic character of the Gestapo as a single department of the Government with no greater degree of compulsion to join, and no greater legal restraint from resigning, than any other department of the State.

Now, it takes character to stand up against great evil—this has always been so. It may be necessary for a man to brave some humiliation and some sacrifice in order to refuse to do the evil bidding of an evil master. But responsibility for the crimes of these organizations should not be evaded by the application of a dry, technical, or meaningless concept of compulsion.

From the establishment of the Nazi Party in 1920 until the conclusion of the war in 1945, these organizations were used by the conspirators for the execution of their schemes, and each committed one or more of the crimes described in Article 6 of the Charter, and participated in the general conspiracy. The Leadership Corps was the first of the organizations to appear on the stage. The next step was the creation, in 1920, of a semi-military organization, the SA, to secure by violence a predominant place for the Party in the political scene. Out of this group, the more select and fanatical SS was formed in 1925, to replace the SA while the latter was banned, and then to join with it in laying the groundwork for the revolution. Upon the seizure of power in 1933, the next organization, the Reich Cabinet, took its place in the conspiracy. With the Government in their hands, the conspirators hastened to suppress all potential opposition, and to that end they created the Gestapo and the SD. Internal security having been guaranteed, they then obtained for promotion of their plans of aggrandizement the last of their implements in the form of the Military.

Each of these was necessary to the successful execution of the conspiracy—the Leadership Corps to direct and control the Party through which political power had to be seized; the SA and SS to oppose political opponents by violence and, after 1933, to fasten the Nazis' control on Germany by extra-legal activities; the Cabinet to devise and enact the laws needed to ensure continuance of the regime; the Gestapo and the SD to detect and suppress internal

opposition; and some servile soldiery to prepare and carry out the expansion of the regime through aggressive war.

Each of the organizations continued to play a necessary and vital part at all times throughout the conspiracy. The program of the Nazi regime stemmed from the Nazi Party. As Hitler said in 1933: "It is not the State which gives orders to us, it is we who give orders to the State." And later in 1938 he added:

> "National Socialism possesses Germany entirely and completely since the day when, 5 years ago, I left the house in Wilhelmsplatz as Reich Chancellor.... The greatest guarantee of the National Socialist revolution lies in the complete domination of the Reich and all of its institutions and organizations, internally and externally, by the National Socialist Party" (Document 2715-PS).

It was the Leadership Corps that formulated the policy of that Party. It was the Leadership Corps that held the Party together. It was the Leadership Corps, through its descending hierarchy of leaders, down to the Blockleiter who controlled 40 households, that kept a firm grip upon the entire populace. Every crime charged in the Indictment was a crime committed by a regime controlled by the Party, and it was the Leadership Corps which controlled the Party and made it function.

While the Party, through the Political Leaders, gave orders to the State, it was the Reich Cabinet—the law-making, executive, and administrative representative of the State—that transformed those orders into laws. Just as the Leadership Corps made the Party function, so the Cabinet made the State function. Every crime which we have proved was a crime of the Nazi State, and the Reich Cabinet was the highest agency for political control and direction within the Nazi State.

But policy and laws are not enough. They must be put into effect and carried into operation. The four other organizations were the executive agencies of the Party and the State. When it was a question of enforcing laws, of detecting, apprehending, imprisoning, and eliminating opponents or potential opponents, the SD, the Gestapo, the SS, and the machinery of concentration camps came into play. The close relationship between the SD and the Gestapo, and the importance of the former in selection of Nazi officials, is disclosed by the Defense affidavit of Karl Weiss, who averred that all political police officials were screened by the SD before being accepted into the Gestapo. And the SD violated the integrity of German elections by reporting how the people voted in secret ballots. When the policy called for war, the para-military organizations like the SA and SS laid the foundation, and top militarists prepared the plans for a powerful German army. When it became

a question of exterminating the population of conquered territories, of deporting them for slave labor, and of confiscating their property, the OKW and the SS had to plan joint operations and, in collaboration with the Gestapo, to carry them into effect. Thus, the Party planned, the Cabinet legislated, and the SS, SA, Gestapo, and the military leaders executed. The manner in which this was done can be illustrated by taking up a number of the principal crimes alleged in the Indictment and showing how the five organizations participated in the commission of each crime.

The basic program for aggression is to be found in the Nazi Party Program of 25 points, proclaimed by Hitler in 1920 and declared unalterable. It included demands for the unification of all Germans in Greater Germany, for the abrogation of the treaties of Versailles and St. Germain, for land and colonies, and for the creation of a national army. As the Party Manual shows, this platform was the table of commandments, and from it was drawn the dogma for every Political Leader. All members of the Leadership Corps bound themselves to follow these precepts and to spread this doctrine.

As early as April 1933, the Cabinet by resolution created the Reich Defense Council, a body of Cabinet members whose function was to prepare the nation for war. In October 1933, the Cabinet proclaimed Germany's withdrawal from the League of Nations and the Disarmament Conference. A year and a half later, in March 1935, it re-established the Wehrmacht and provided for compulsory military service. Its war-planning measures were carried further by its enactment, in May 1935, of a secret unpublished Reich Defense Law, providing for the appointment of a Plenipotentiary General for War Economy with sweeping powers, and its decision that the plenipotentiary should begin his work at once, even in peacetime. In February 1938, on the eve of the seizure of Austria, a second component of the Reich Cabinet, the Secret Cabinet Council, was created to advise Hitler in conducting foreign policy. And it was the Defendant Von Neurath, the president of that council, who took diplomatic steps to justify and excuse this aggressive action. After the seizure had been accomplished, it was the Cabinet which provided for the reunion of Austria with the Reich. Six months later, by another secret and wholly unpublished law, the Cabinet provided for a Three Man College of plenipotentiaries whose function it was to have prepared at all times complete plans and ready measures for the sudden and not-to-be-declared war. In November 1938, it was a Cabinet law which provided for the integration of the Sudetenland with Germany, and in March 1939 for the incorporation of Memel into Germany. The Tribunal will remember the dramatic meeting of the Reich Defense Council held in June of 1939, where preparations were completed for the coming war and

detailed plans were approved, such as using prisoners of war and concentration camp inmates for war production, compulsory work for women in wartime, and the bringing of hundreds of thousands of workers from the Protectorate to be housed together in hutments. In August 1939, on the eve of the attack on Poland, the Ministerial Council for the Defense of the Reich, the third component of the Reich Cabinet, was created out of members of the Cabinet to act as a smaller working group in the exercise of legislative and executive wartime powers. Thereafter, it was this component of the Reich Cabinet, rather than the ordinary Cabinet, which enacted most of the legislation for carrying on the war, but with the knowledge and participation of the entire membership of the ordinary Cabinet.

While the Cabinet was thus preparing the legal and administrative framework for aggression, the other organizations were actively engaged in related preparations to the same end. An aggressive militaristic psychology on the part of the people and the building-up of a powerful army were essential to prepare the nation for war. To the attainment of these ends, the SA assiduously devoted itself. First in 1933 by engaging in an intensive propaganda campaign demanding colonies, "Lebensraum," the abrogation of the Treaty of Versailles, falsely attributing aggressive designs to Germany's neighbors and generally spreading the now well-known Party bromides. Almost simultaneously, it organized a training program for German youth in the technique of modern war, at first in dark secrecy, but finally in the open, when it felt itself sufficiently prepared and was sure of no outside interference. But the SA did not confine itself to mere preparations. When the first aggressive action, that against Austria, was taken, units of the SA marched through the streets of Vienna and seized the principal government buildings, and in the plans for the seizure of the Sudetenland the SA formed a part of the Henlein Free Corps and furnished it with supplies and equipment.

The activities of the SS were similar to the SA, and even more widespread. Like the SA, it served as a para-military organization in the years preceding 1933. Like the SA, it participated in the aggression against Austria and in the conspiracy to undermine Czechoslovakia through the Henlein Free Corps. Its activities are distinguishable from those of the SA in these matters only because it played the more important part. Its professional combat forces joined with the Army in marching into the Sudetenland and Bohemia-Moravia, and in the invasion of Poland. One of its main departments, the Volksdeutsche Mittelstelle, was a center for Fifth Column activities. The SD of the Reichsführer SS operated a network of spies throughout the world, and its agents were spying in the United States before Germany declared war upon America.

The largest branch of the SS, the Waffen-SS, was created and developed for the sole purpose of carrying on the war and participated, as an SS army, in all phases of the war in the East and in the West. Its shameful record of war atrocities needs no amplification here. The Gestapo and SD were likewise involved in the commission of crimes against the peace. The very incident that served as an excuse for the invasion of Poland, and thus set off the entire war, was executed by the Gestapo and the SD. I refer to the simulated Polish attack on the radio station at Gleiwitz, where concentration camp prisoners were dressed in Polish uniforms, murdered, and left as evidence of a Polish raid, so as to afford Hitler a justification for the attack upon Poland. Of course the professional military clique planned and participated in all aggressions from the militarization of the Rhineland in 1936 to the attack on Soviet Russia in 1941.

The waging of these wars of aggression was possible for Germany only by the utilization of millions of enslaved workers, and the slave labor program was possible only with the assistance of these organizations. Sauckel was the master slaver, but he needed a million Party whips to enforce his merciless dictates. The SS, the Gestapo, and the SD at his bidding drove the foreign serfs within the Reich borders under the lash of deceit, of kidnapping, of heartbreaking family separations, of arson, of torture, and of murder. The Leadership Corps, in co-operation with the Nazi Labor Front and with industrial management, were Sauckel's receiving agents for these unfortunate ones. At the Reich level and at the Gau level members of the Leadership Corps helped arrange for the conditions of bedding, feeding, and restraining these wretched humans, giving them less attention and less decent concern than primitive man often gave to his brutes. The Gauleiter, functioning as Reich Defense Commissioners, at the order of Speer and Sauckel, and under the most revolting conditions of conveyance shunted the slaves from receiving depots to armament industries where like stanchioned beasts they were submitted to sub-human indignities and worked to death. Medical care and even the most simple medical supplies were refused them. Denied even the social advantages of the barnyard, they struggled under less than good stable standards. With a crassness unknown to ordinary domestic animal care, directives providing for the abortion of female laborers were distributed to Gauleiter and Kreisleiter and their staffs. Their keepers were of the SD and the Gestapo, and the cell blocks of the concentration camp awaited any who chafed under the cruelty. Urged on by Speer, the Gauleiter utilized prisoners of war for slave labor purposes, and Rosenberg's minions in the Eastern territories under the spur of Sauckel's demands gleaned new millions for thralldom. The Army harnessed thousands for the construction of military

fortifications and for military production, and Keitel carried out Hitler's order by hitching honorable soldier war prisoners to machines that made materials for war. The greedy Göring sought war prisoner slaves for his air armament industries and suggested new uses for old orders violating recognized codes of warfare, and his aid Milch thought of the forced use of Russian prisoners of war to man anti-aircraft batteries as comedy relief for the oppressive madness of the times. Depravity supplanted degradation, and death became the declared objective of concentration camp labor establishments under the SS. Of necessity all of this went on with high Cabinet approval as the impact of this whole terrible program created new problems for Germany.

So the slaves suffered in the midst of the German population as thousands of them were farmed out for better or for worse to householders, to great and to small industries, until at last, in the closing hours of the conflict, under pressure of the grim necessities of the war situation and solely to increase the war effort, the Nazi Government itself was forced to issue an order to slacken the violence against those who were in chains. The great significance of this order cannot be overstated. By its own terms, it makes perfectly clear that cruelty to the slaves was a State policy carried out by the German people. It is damning evidence against the whole German nation. It is, in our judgment, one of the most important documents in this case and it is shocking to realize that it came from the Party Chancellery and the Reich Security Main Office—both high State agencies; and it was directed, in writing, to all Political Leaders down to Ortsgruppenleiter, and to the lowest level of German society by word of mouth.

The sweep of the crimes committed against the Jewish people is too great for the human mind to grasp completely. Our whole experience in living conditions, our mental processes, make it so. We shudder at one bestial murder, we shrink from a few disgusting crimes, but when confronted with mass horror, we find ourselves groping for adequate reaction. We simply cannot comprehend six million murders. In the regular course of life it is good that this is so; but in weighing the evidence in this case it is something of a handicap for all parties except the guilty. Of some facts, however, we do have full knowledge and full understanding. They are all in evidence before this Tribunal. We know that these indicted organizations all share responsibility for the vast crimes committed against the Jewish people. We know that the evil geniuses of the Nazi plan understood how to nurture a nation for hatred. They began easily by having the Leadership Corps write into the Party platform that only a member of the race could be a citizen. Thus

they laid the groundwork for the basic premise upon which Jews were deprived of human rights in Germany. Then the same Leadership Corps began the work of directing a campaign of abuse against the whole Jewish people. Every man's failure, all worry, each disappointment, any fear, was resolved in the crucible of Jewish responsibility. Throughout the Reich, Jew-baiting committees were established under the direction of various Political Leaders. Led by Gauleiter Streicher, Party members engaged in open violence against Jews and their property by destroying the synagogue here in Nuremberg. Then came the hideous occurrences on the night of 10 November 1938 under the incitement of Party Propaganda Leader Goebbels, and with the open assistance of the Leadership Corps and the SA. To add mockery to malefaction, the Nazis set up a Supreme Party Court to investigate these outrages, and although it found that instructions for carrying out these pogroms had been telephoned by the Gauleiter to their subordinate leaders, it ruled that in the killing of Jews without orders or contrary to orders, "at heart the men were convinced that they had done a service to their Führer and to their Party," and under the guise of this judicial hypocrisy none of the participants were so much as expelled from the Party.

Throughout the years, as this hate movement progressed, all manner of discriminatory legislation was enacted to restrict the mobility of the Jew, to impoverish him, and to degrade him. Great numbers of these legislative monstrosities, all the creations of the Reich Cabinet, are in evidence in this record. With quickened pace the Nazis moved to new cruelties and from a mixed-up policy which demanded the departure of the Jew and called for his detention in German concentration camps, they approached the depths of shame in a Reich Cabinet proposal for the sterilization of even half-Jews. In a cold setting of sadism and sin, the Reich Cabinet reviewed the manner in which half-Jews were to be treated, and then recommendations of the Cabinet were submitted to Hitler for final action. The SA men were among the first to apply direct force and brutality against the Jewish people in Germany. The witness Severing has told the Tribunal from the witness stand that during the years after 1921 the SA engaged in organized terror against the Jews. These street ruffians, having nearly completed their orgies against ordinary political opponents, now found new uses for their clubs and whips and new outlets for their perverse propensities. Any Jew was fair game and it was open season the year round for Jew-hunting. They smashed into private homes and abused the terrified Jewish inhabitants without any pretense of cause or provocation. And they interlaced their physical violence with their constant tirade of slanderous anti-Jewish propaganda.

The oppression, persecution, discrimination, and brutality at the hands of the Leadership Corps, the Reich Cabinet, and the SA were only the beginnings of the dreadful fate that the Nazis prepared for the Jews. In this fashion, the way was paved for the sinister activities of the Gestapo when it came into play. Now these secret policemen moved in with their wraith-like methods. Trembling Jews were hauled from their beds in the middle of the night and dispatched without semblance of accusation to concentration camps, and often their family members awoke to find them missing. Thousands of Jewish people so disappeared never to be seen or heard of again, and all over Europe today surviving family remnants with aching hearts are seeking clues or indications of the fate that befell them. Sad to relate, the only answer to most of the searching is to be found in the records of this Tribunal, in the captured documents of the SS, the SD, and the Gestapo, and in the death books of the gas chambers, the mass graves, and the crematoria.

By this time the Nazis were astride much of Central Europe. Wallowing in their early bloody successes and puffed up with premature confidence in their ability to dominate the continent, they dropped all sham about the Jew in Germany and laid bare his ultimate doom. The Jew was to be wiped from the face of Europe—not by migration, not by mass movement, but by annihilation. It was Göring who ordered Heydrich as Chief of the Security Police and SD to work out a "complete solution" of the Jewish problem in the areas occupied by the Reich. And it was Heydrich, as Chief of the Security Police and SD, and acting upon Göring's order, who instructed the Gestapo to murder all Jews who could not be used for slave labor. Gestapo men, under the leadership of Eichmann, went into the occupied territories, and, with the assistance of local officers of the Security Police and SD, succeeded in herding virtually all of the Jews of Europe into concentration camps and annihilation centers. With unabated fury the Nazis plunged from Göring's "complete solution" to Himmler's "final solution." This was the last responsibility, and who but Himmler as head of the SS could fulfill this unholy mission? In his foul hands and those of his SS was placed the assignment for the complete destruction of the Jew. He warmed to his task. His SS men, having been tested and proved in the Warsaw ghetto and in the clearing of the Jews from Galicia, were ready for the refinements of the extermination plants. And with Hitler's order to Himmler, SS exterminator Hoess opened the largest murder mart in history. Two thousand human beings at a time perished in his modern slaughterhouses. All over German-occupied Europe SS plants of the Hoess-Auschwitz design gassed living Jews with dispatch and destroyed their remains in ovens streamlined for mass operation. Thus the

SS made it possible for Himmler to declare in his Posen speech, I quote:

> "I also want to talk to you quite frankly on a very grave matter.... I mean the clearing out of the Jews, the extermination of the Jewish race.... this is a page of glory in our history..." (1919-PS, USA-170).

And I would like to say parenthetically, Mr. President, that the quotation which appears on Page 29 of the text is incorrect and should be stricken, and the one which I have read is the proper one.

At the close of the war in Europe, an incredulous world recoiled from the fact of this crime—a crime that can never be completely understood, completely explained, or properly requited. Slowly mankind moved to its sad and sober acceptance. But this was not the end, for the Nazis, through propaganda conduits, had piped their racial and religious poison into most of Europe and to a large part of the world. To restore the moral health of Central Europe is not enough; seepage from Nazi sewers of slander has polluted many of man's Pierian springs, and the virus of hate and bigotry and intolerance has fouled the waters. It will take generations of mental and moral sanitation to stamp out this Nazi plague. Thus the crime lives after the criminals—these defendants and these organizations.

The transition from the mistreatment of political opponents, of racial and religious groups, to the abuse and the killing of prisoners of war in violation of the rules of warfare was not difficult for the members of the indicted organizations. These offenses were the result of the aggressive war aims for which the Reich Cabinet had a direct responsibility. The history of mistreatment of honorable soldiers who had surrendered is too well known to this Tribunal to require detailed discussion here. Yet it is worthwhile to recall to mind that Reichsleiter Goebbels and Bormann, speaking for the Leadership Corps of the Nazi Party, were those who instituted the policy of lynching Allied airmen by the German populace. This savage policy was carried out by the Leadership Corps of the Nazi Party, while at the same time military units of the SS wantonly executed prisoners of war on every battlefield. To the Gestapo and the SD was given the first responsibility for carrying out the barbaric Hitler order of 18 October 1942 and its subsequent amendments calling for the summary execution of Allied commandos and paratroopers. Nor should it be forgotten that throughout the war the Gestapo screened prisoners of war for Jews and those of the Communist political faith, who were then deliberately murdered. The Tribunal will recall that the particular document which concerns the screening of prisoner-of-war camps was introduced in the later stages of the Trial, and proved conclusively that local

Gestapo offices at Munich, Regensburg, Fürth, and Nuremberg screened prisoner-of-war camps in Bavaria for classes of prisoners of war to be sent to Dachau for liquidation by SS guards, and that these Gestapo offices were criticized by the High Command for failure to screen as effectively as the High Command desired. I should like to point out that this particular crime of which I am now speaking has been carefully avoided by counsel for the defendant organization in pleading the case for the implicated organizations. Yet it is one of the clearest cases of wilful premeditated murder of prisoners of war in violation of established international law. It is positive demonstration of the complete savagery of the responsible organizations with respect to the treatment of prisoners of war. It is Document Number R-178, Exhibit Number USA-910. The infamous Bullet Decree, under which the Gestapo sent recaptured officer prisoners of war to Mauthausen Concentration Camp for execution by SS guards, is additional proof of the criminal character of these organizations.

The Nazis always knew that the Christian Church was an unsurmountable obstacle to their evil intentions, but with characteristic cunning they first moved against it under the disguise of necessary emergency legislation, which was enacted by the Reich Cabinet and which laid the groundwork for the later enabling legislation placing all manner of restrictions on usual Church activities. This was the first and the decisive step, and once it had been taken, the fate of the Christian Church was sealed; only time and the turn of events remained for its fulfillment. In the entire Reich Cabinet of that time, made up almost exclusively of men who pretended to wear the badge of Christianity, only one (Baron Eltz von Rübenach) stood up for the faith. So clear was the intention of the Cabinet decrees, that he had no hesitancy in asserting that Nazism and Christianity could never be reconciled. But for Baron Eltz von Rübenach, there were many who were willing to play the Nazi game. For a mess of political pottage, they denied their faith and handed to the political leadership its first weapon for use against the clergy. From these first steps, much of the hitherto unexplained moral decadence of the times undoubtedly stems. From these beginnings came the speedily declining influence of the Church. The Nazis wanted it that way. In their political philosophy there was no place for Caesar and for God. Schirach and Rosenberg as Reichsleiter and members of the Leadership Corps, together with countless associates, hammered away at all spiritual forces—never by a frontal attack, but always from the flank, while the hounds of the Leadership Corps carried out systematic slandering of the clergy and constant undermining of sacred religious practices. Soon the anti-clerical campaign was expanded to the confiscation of Church properties, and in the later years broke out into open

suppression of religious education and even of simple spiritual activities. There can be no doubt as to the real attitude toward the Christian Church, for it clearly appears in the organized espionage system instituted against the clergy by the Gestapo and the SD. For this shabby task, members of these two organizations were carefully schooled in a deceitful course of conduct rigged to establish a record, as a later basis, for the complete abolition of the Christian Church in Germany when the war was over. Lying, falsification, and entrapment were fundamental methods for the building up of this fabricated evidence. The Gestapo, not content with breaking up Church organizations and prohibiting Church groups from social gatherings, or with its task of preparing false testimony, made wholesale arrests of clergymen, placed them in protective custody, and finally lodged them in concentration camps. From a program of such basic evil it was not to be expected that the SS would remain aloof. Although heavily occupied with wrongdoing all over Europe, it found time to confiscate Church properties and monasteries on its own responsibility and had Catholic priests by the hundreds cruelly murdered in the Dachau Concentration Camp.

So some Christians and numberless Jews were united in a community of suffering. And thus in a strange arrangement of circumstances, the Nazis who tried to destroy both, may have founded the beginnings of an understanding that can grow best because it has survived the worst.

The concentration camp was the master weapon in the Nazi arsenal of tyranny. To the SA belongs the disgrace of having first established and maintained such camps to which it sent persons whom it had illegally arrested. Even SA meeting places were used for the confinement of potential opponents who were beaten and abused by SA men. SA members served as guards of the state concentration camps during the first months of the Nazi regime, and there applied the technique of brutality which they had acquired in operating their own illegal camps. Although the legal basis for protective custody was the extorted decree of the Reich President for the protection of the State in 1933, which suspended clauses of the Weimar Constitution guaranteeing civil liberties to the German people, the Reich Cabinet soon obliged with ready legislation which made more expeditious the internment of political enemies and other undesirables under the concentration camp system. So interested in the establishment of these camps were members of the Reich Cabinet that Frick, Rosenberg, and Funk, while serving in that body, inspected the camps. And the Reich Cabinet budget set aside 125 million Reichsmark for the SS and for the management and maintenance of the concentration camps.

In order to achieve domination of the German people, the concentration camp system was placed at the disposal of the Leadership Corps, and it made use of these camps as a dumping ground for thousands of Jews who were apprehended under Leadership Corps auspices during the pogroms of November 1938. As shown by the affidavit of the defense witness Karl Weiss, Gauleiter frequently put pressure upon the Gestapo to commit political enemies to concentration camps or to prevent their release in proper time.

The co-operating military men had direct interest in the concentration camps system; Soviet prisoners of war were sent to concentration camps to be employed in the armament industries of the Reich, and officers of the OKW worked out with the Gestapo the plans for sending returned Soviet prisoners of war to the Concentration Camp Mauthausen, where they were put to death for honorable attempts to escape from their captors.

But the two organizations which were most directly concerned with and implicated in the concentration camp system were the Gestapo and the SS. In the early days the concentration camps were under the political direction of the Gestapo, which issued orders for punishment to be inflicted upon the inmates. The decree of 1936 declared that the Gestapo should administer the concentration camps, but it was the SS which furnished guards from the Death's Head Battalions and ultimately became responsible for all internal administration of the camps. The Gestapo remained the sole authority in the Nazi State empowered to commit political prisoners to concentration camps, although the SD joined the Gestapo in committing Poles who did not qualify for Germanization. The Gestapo sent thousands upon thousands of persons to concentration camps for slave labor and shipped millions of persons to annihilation centers for extermination.

The atrocities committed by the SS within the concentration camps are in themselves adequate to convict the SS as a criminal organization. The witness Hoess testified that toward the end of the war approximately 35,000 members of the Waffen-SS were employed as guards in concentration camps.

In his never-to-be-forgotten confession in this courtroom he said that in Auschwitz alone, during the time he was commandant, the SS exterminated two and one half million men, women, and children by gassing and burning, and that another half million died from starvation and disease, and among those killed were 20,000 Soviet prisoners of war. When the SS did not murder bedridden patients, they drafted them for labor which they could perform in their beds. It ordered women prisoners to be beaten by other prisoners, and in its unrestrained savagery killed, maimed, and tortured inmates of

concentration camps by carrying out what were called medical experiments, but which were in fact sojourns in sadism.

The concentration camp system was the heart of the Nazi scheme for tyranny. Conditions in these camps were cruel, because the Nazis required the force of fear to perpetuate their hold over the common people. Behind every Nazi law and decree stood the spectre of concentration camp confinement. The agencies which created, maintained, directed, and utilized these camps were the organizations named in this Indictment.

In addition to the crimes of waging aggressive war, persecution of the Jews, forced labor, persecution of the Churches, and concentration camps, which we have been considering, the indicted organizations participated of course in many other crimes in aid of the conspiracy. The Leadership Corps was active in destroying the free trade union movement, and the SA took the initial direct action against the trade unionists. The art treasures of Europe were seized and despoiled by the Einsatzstab Rosenberg of the Leadership Corps in conjunction with the Gestapo and the SD. The SS carried out the vicious Germanization program under which citizens of occupied territories were driven from their homes and lands to make way for racial Germans. The Gestapo and officers of the OKW conceived and carried out the hellish "Night and Fog" decree, by which hapless civilians of occupied countries disappeared into the Reich, never to be heard of again. Thus, in a crime of which only the Nazis were capable, the awful anguish of relative and friend was added to wanton murder.

In no respect can the criminal activities of these organizations be better illustrated than in the murderous work of the Einsatz Groups of the Security Police and the SD, which were first organized by the SD in September of 1938 in anticipation of the invasion of Czechoslovakia. With their leaders drawn from the SD and the Gestapo, and staffed by members of the Waffen-SS, they coordinated slaughter and pillage with military maneuvers, and reports of their activities were forwarded to the Political Leaders through the Reich Defense Commissioners. Even the SA participated in these jackal anti-partisan expeditions in the East.

When the German armies broke into Czechoslovakia and Poland, into Denmark and Norway, the "Einsatz" bandits followed for the purpose of striking down resistance, terrorizing the population, and exterminating racial groups. So well did these terror specialists do their work that four new units were set up before the attack on the Soviet Union, one of them headed by the infamous Chief of the SD, Ohlendorf, who testified in this courtroom to the incredible brutality of his accomplishments, and to the shocking details of the operation carried out in coordination with branches of the military.

His testimony will be remembered for its cold account of callous murder, enslavement, and plunder, and most of all for the horrible program of destroying men, women, and children of the Jewish race. Mankind will not soon forget his sickening story of the mobile murder of women and little children in gas vans, nor of the evil-hardened killers whose very stomachs turned at the awful sight when they unlatched the doors of the death cars at the gravesides. These were the men who sat at the edge of anti-tank ditches, cigarette in mouth, calmly shooting their naked victims in the back of the neck with their machine pistols. These were the men who, according to their own corpse accountants, murdered some two million men, women, and children. These were the men of the SD.

The organization chart of the Security Police and the SD now before the Tribunal was prepared and certified to by SD official Schellenberg, the Chief of Office VI of the RSHA, and by SD official Ohlendorf, Chief of Office III of the RSHA. This chart is Exhibit USA-493, and it shows that these Einsatz Groups were an integral part of the Security Police and SD under the supreme command of the Defendant Kaltenbrunner and not, as has been argued before this Tribunal, independent organizations responsible directly to Himmler. The officers of these groups were drawn from the Gestapo and the SD and, to a lesser extent, from the Criminal Police. They received their orders from the various offices of the RSHA, that is, from Office III or Office VI, as appears on that chart, as to matters pertaining to the SD, and from Office IV, as to matters pertaining to the Gestapo. They filed their reports with these offices, and these offices made up consolidated reports which were distributed to higher police officials and Reich Defense Commissioners, several examples of which have been introduced in the course of these proceedings.

Counsel for the Gestapo—and I am departing a little from the text, Mr. President, in order to meet the argument that has been made by Counsel for the Gestapo—has argued that the Gestapo was erroneously blamed for the crimes committed in the occupied territories, but he says, interestingly enough, that the SS committed these crimes. And then Counsel for the SS argues before the Tribunal that the SS was erroneously blamed and the SD committed the crimes. And then Counsel for the SD says to the Tribunal that the SD was erroneously blamed and the Gestapo was really to blame after all. Counsel for the SS says also that the Gestapo wore the feared black uniform and that therefore Gestapo men were frequently mistaken for SS men. Counsel for the SS blames the Gestapo for the running of the concentration camps and Counsel for the Gestapo says, no, it was the SS who ran the concentration

camps. Now the fact is that all of these executive agencies participated in the commission of these vast crimes against humanity.

It is a strange feature of this Trial that counsel for the respective organizations have not sought to deny these crimes but only to shift responsibility for their commission. The military defendants blame the Political Leaders for initiating wars of aggression; the Gestapo blames the soldiers for the murder of escaped prisoners of war; the SA blames the Gestapo for concentration camp murders; the Gestapo blames the Leadership Corps for anti-Jewish pogroms; the SS blames the Cabinet for the concentration camp system; and the Cabinet blames the SS for the exterminations in the East.

The fact is that all these organizations united in carrying out the criminal program of Nazi Germany. They are to blame. As they complemented each other, it is unnecessary to define as a matter of precise proof the borders of their own deviltry. When the Reich Cabinet promulgated the decree for securing the unity of the Party and State, it insolubly bound these organizations for good and for bad. When the membership of these organizations swore an oath of obedience to Hitler, they united themselves for all time with him, his work, and his guilt.

All members of the Reich Cabinet had full knowledge of the functions and activities of the Cabinet. They carried out their work together. They met as a body. They considered proposed measures as a group, and they acted as a Cabinet. Sometimes they met as the Reich Cabinet, sometimes as the Reich Defense Council. But in every case they jointly considered proposed legislation and enacted the laws which gave the rubber-stamp of legality to the machinations of the top conspirators. From the budgetary matters of the Reich alone, if from no other source, the members of the Reich Cabinet, each year of the Nazi regime, were of necessity informed to a very extensive degree on all matters that were going on in Germany. They knew about the concentration camp system because they voted the money for maintenance of concentration camps, and because their ministers inspected concentration camps. They knew about the plans for aggressive war because they laid the groundwork for the war economy. They knew about the forced labor of prisoners of war in armament industries because they planned it even in advance of war, as the evidence shows. They prepared the political blue prints for the entire program of aggression and of aggrandizement. Planning requires consultation, and consultation imparts knowledge.

Now any member of the SA who could read had full knowledge of the aims and objectives of the SA. The weekly periodical, *The SA-Mann,* and the monthly periodical, *The SA Leader,* stated time and again the purposes, objectives, tasks, and methods of the SA.

The duties and activities of the SA in fighting in the streets, abusing political opponents, and chastising Jews are stated in almost every issue of these publications. The para-military nature of the organization was self-evident. The SA participated in election proceedings, in the plan to set fire to the Reichstag, in anti-Jewish pogroms and boycott activities. Its activities were widespread and well-known, and its criminality was open and notorious. Much of this infamy was commonly known throughout the world. Dr. Wilhelm Högner, the Prime Minister of Bavaria, stated in his affidavit, I quote from it:

> "The gross excesses of the SA and the SS in the service of the NSDAP were accomplished so publicly that the whole populace knew of them. Everyone who entered these organizations as a member knew of such excesses."

That is what Dr. Högner said. That is Document Number D-930, Exhibit Number GB-617.

The Political Leaders dealt in information and in propaganda. They were the agents of the ideology and the political detectives who checked on the reactions of the people. Knowledge for them was a two-way circuit. They knew the plan and its operations and they learned of its effects. A typical example is found in the order to lynch Allied airmen. This order had to be passed throughout the Leadership Corps in order to reach the lower echelons who were to carry out the lynchings. They saw to it that the order was carried out and they made reports on its effectiveness. There were no secrets in any Nazi cell or block unknown to them. The turn of a radio dial—the facial expression of disapproval—the inviolate secrets between cleric and supplicant—the ancient trust between father and son—even the sacred confidences of marriage—were their stock in trade. Knowledge was their business.

Every member of the SS took an oath of obedience unto death to Hitler and every member of the SS was indoctrinated in the full meanings of Hitlerian ideology. In 1936, Himmler, in describing the SS as an anti-Bolshevistic fighting organization, openly stated, I quote:

> "We shall take care that never again in Germany, the heart of Europe, will the Jewish-Bolshevistic revolution of sub-humans be able to be kindled either from within or through emissaries from without" (1851-PS).

Can anyone doubt that SS men understood the meaning of these words? Or of Himmler's confession, again I quote: "I know that there are some people in Germany who become sick when they see these black coats." He went on to say that he did not expect that he and his SS men would be loved by too many. We say, the sickness which he referred to, which overcame people when they saw the

black coats, was the malady of fear—fear of the brutal methods of the SS, the murders they committed on the streets, and the beatings they inflicted in the concentration camps. It was known to everyone that black-coated SS men carried out the murders of 30 June 1934. Even Von Manstein, of the Army, was in this witness-stand testifying that his soldiers so feared the evil SS that they were afraid to report SS mass killings in the East. The knowledge that is necessary to bind the SS organization is the knowledge that a member of the Death's Head Battalion had of atrocities committed in the concentration camp, that a member of the anti-partisan bands had of the killings, kidnappings, and plunder that went on behind the fighting lines, that a member of the SS Panzer Divisions had of the killings of prisoners of war, or that a member of the SS Medical Corps had of the savage experiments on human beings. This knowledge was diffused by frequent changes in their duties. The Death's Head Battalions, which at first were charged with the guarding of concentration camp inmates, subsequently were put into the fighting front; whereas during the war the fighting troops, the Waffen-SS, were used for guarding concentration camps and for carrying out exterminations in annihilation centers. The SS came generally to be known as the symbol for an organization both sinister and savage.

The objectives of the Gestapo were laid down by law and discussed time and again in semi-official publications such as the *Völkischer Beobachter, Das Archiv,* the magazine of the German Police, and Best's basic handbook on the German Police. Every member knew that the Gestapo was the special police force set up by Göring and developed by Himmler to strike down potential opponents of the tyranny. Every member knew that the Gestapo operated outside the law, that the Gestapo could arrest on its own authority and imprison on its independent judgment. Every member knew that the Gestapo was the agency which filled the concentration camps with political opponents. All knew that the Gestapo was organized for the specific purpose of persecuting the victims of Nazi oppression—the Jews, the Communists, and the Churches. The right to use torture in interrogations had to be known to all who interrogated. There could be no secrecy as to the criminal aims of the Gestapo or the criminal methods by which this primary agency of terror carried out its work. And that it was an instrument of terror was known not merely to the membership—it was known throughout Germany and Europe, and in every country of the world, where the very name Gestapo became the watchword of terror and of fear.

So we ask that a common-sense and realistic test of knowledge be applied by this Tribunal in judging these organizations for what they are, the most vicious and evil of all Nazi inventions. Surely

they shall not escape condemnation for the vast crimes they have committed through a false and flimsy defense of ignorance in their own circles. For long, long years after this hall is emptied and for centuries beyond present perspective, the roll call of terror against humankind will be led by these appellations—Nazi, Nazi Party Leadership, SA, SD, SS, and Gestapo.

Over 300,000 members of these organizations have been heard either in person or by affidavit. But there is a Charter requirement that there be a member of each organization in the dock who is guilty of an offense relating to the organization of which he is a member, for the purpose of ensuring that there would be present before the Tribunal someone who could speak for each organization. So the great number of witnesses who have appeared before the Commission and the Tribunal has, in effect, made superfluous this Charter protection to the organizations.

The measure of criminality of each organization is not limited to the acts committed by the defendant in the dock who was a member of the organization. It is wholly sufficient, we think, to meet the Charter requirements if the defendant member is guilty of some crime relating to his position as a member of the organization. In every case the criminality of the named organizations is based upon evidence which greatly surpasses the specific criminal acts of the defendants. The concept of membership stated in the Indictment in this connection is in no sense a technical one. The word representative might as well have been used, since the object of the provision was to ensure that there would be some defendant qualified to speak for, or otherwise represent, each of the named organizations.

Seventeen of the 22 individual defendants were members of the Reich Cabinet. All of these defendants participated to a greater or lesser degree in the meetings of the Reich Cabinet, of the Secret Cabinet Counsel, and of the Reich Defense Council. All of them considered, acted upon, and participated in the enactment of the legislation which led to the instigation of wars of aggression and the commission of discriminatory acts against racial minorities. The criminality of each of these defendants is founded in part upon his participation in the supreme legislative body of the Nazi system, the Reich Cabinet.

Ten of the individual defendants were members of the Leadership Corps. The activities of Gauleiter Von Schirach and Streicher are illustrative of the criminality of all these defendants in their capacity as leaders of the Nazi Party.

It was as Gauleiter of Franconia that Streicher carried out his venomous campaign against the Jews and it was as Gauleiter of Vienna that Schirach exploited slave labor.

Nine of the defendants were SS members. It is hardly necessary to go beyond SS Obergruppenführer Kaltenbrunner as a representative of this organization. Here is a defendant who was the head of the most powerful department in the entire SS, the Reich Security Main Office. His activities in directing this organization need no amplification. His shame disgraces all.

Eight of the defendants were members of the SA, of which Göring assumed command in the year 1923 at the very inception of the Nazi struggle for power. It was Göring who directed the SA in the Munich Putsch, and it was Göring who built and made of the SA a fighting body of street rowdies.

Göring and Kaltenbrunner were members of the Gestapo. Göring, the founder of the Gestapo, bragged that every Gestapo bullet fired was his bullet, and that he assumed full responsibility for the acts of the Gestapo and was not afraid to do so. As Chief of the Reich Security Main Office, Kaltenbrunner had direct responsibility for the Gestapo. The Tribunal has seen orders for commitments to concentration camps carrying his typed or facsimile signature; it has reviewed evidence that orders for executions in concentration camps were issued in his name; and it has examined many criminal orders from him as Chief of the Security Police and SD to regional Gestapo offices.

The integration of defendants and organizations is further demonstrated by the fact that most of the defendants were members of more than one of the named organizations. Frank, Frick, Göring, and Bormann were members of four.

Cabinet members Ribbentrop and Neurath were SS generals. SA Generals Rosenberg and Schirach were Cabinet members. Gauleiter Sauckel and Streicher were SA generals. Field Marshal Keitel and Admiral Dönitz were Cabinet members. The complete significance of this integration is shown in the sinister murder of the French General Mesny. This murder was directed and planned by SS Obergruppenführer Kaltenbrunner, as head of the Gestapo and SD, and by SS Obergruppenführer Ribbentrop, as a member of the Reich Cabinet. Kaltenbrunner worked out the mechanics of the murder and Ribbentrop worked out the plan of deception.

Counsel for the Gestapo, in arguing before the Tribunal, has argued that the murder was accomplished by the Reich Criminal Police rather than by the Gestapo, since at the time Panzinger, who worked out the details, had succeeded to the duties of Nebe as Chief of Office V of the RSHA. But I should like to remind the Tribunal that there is not one shred of evidence before it to show that Panzinger ever retired from the post he had had for years as head of the department in the Gestapo responsible for special actions and assassinations. Anyway, the murder of General Mesny, according

to their own organizational chart, was a political action, was a political murder, and a matter under the cognizance of the Gestapo, not of the Criminal Police.

Parenthetically, I should like to say that if it is contended at any later time that this nefarious episode was an act of reprisal, then I ask the Tribunal to bear in mind that reprisals against prisoners of war are expressly forbidden under the 1929 Convention, to which Germany was a signatory at this time and to which it had been a signatory for many years.

The whole macabre tragedy, from the faked removal of Mesny from the officers' prisoner-of-war camp at Königstein to the sacrilegious ceremony attending the burial of his ashes with military honors at Dresden, required the connivance and action of the Reich Cabinet, the military men, the SS, the SD, and the Gestapo. Throughout this particularly sad and sordid episode there is evident the outstanding fact of all Nazism—hypocrisy. This was white-collar homicide, custom-built for deceit, starched up with foreign office formality, bearing the cold sheen of Kaltenbrunner's SD and Gestapo, and supported and sustained by the outwardly respectable yoke of the professional army.

I should also like to add at this point—I think I can conclude it in a very short time—that counsel for the defendant organizations have each taken a large part of their time in arguing the legal principles which derive from the Charter, and in many cases seek to go behind the Charter itself. They have argued that the procedure envisioned by the Charter amounts to collective punishment, that the idea of fastening criminality on organizations is unique in law and that the maxim *nulla poena sine lege* is being violated by these proceedings.

I shall not review the legal arguments on this subject since they were exhaustively covered by Justice Jackson in his address last February. But I do assert again to the Tribunal that we are not here seeking a collective condemnation of individuals; we are seeking to establish one thing, and one thing only, and that is that these organizations which taken together fastened the police state upon Germany and perpetrated these crimes, shall be characterized in history for what they were, for what they are worth—organizations, the aims, purposes, and actions of which were basically criminal, and which openly violated all tenets of decency and law held in every civilized society.

Now, Defense Counsel argue that if you declare these organizations criminal, the members will become martyrs. I say that if you exonerate these organizations, the members who took these vows of unconditional obedience to Hitler and Himmler and who committed millions of people to concentration camps, mistreated

and starved and murdered thousands more in the names of these organizations, will say: "We are vindicated. What Hitler told us, what Himmler told us, was the truth. These organizations to which we gave our unconditional obedience were not criminal organizations and we are not to be censured for having belonged to them." They will find in your acquittal of these organizations justification for these horrible crimes and thereby new reasons to convince people in Germany that no wrong was done. And it will give them the terrible opportunity for reviving them in one form or another and for inflicting again upon the civilized world the terrible consequences of criminal group action.

I should also like to point out, because I have read into the record some remarks relative to the Sedition Act of 1940, that the United States Sedition Act of 1940 was cited only to show that the concept of organizational criminality is not foreign to Anglo-American jurisprudence.

Under the Sedition Act, each person indicted of course has the opportunity of resisting in court the charge of criminality of the organization to which he is accused of belonging. But that is not to say, it seems to me, that apart from constitutional questions, which are inapplicable here, the Congress of the United States could not provide, as in this Charter, that the criminal character of the organization should first be litigated in a general proceeding in which all members are given a chance of appearing in person or by representation, reserving their personal defenses to subsequent trials in which they may contest all questions except the single question of whether the organization was criminal. For what we seek here is not a criminal conviction of the members of these organizations. Their individual criminality—I think it is worth repeating—is not an issue now before this Tribunal. The only issue is whether the Tribunal shall or shall not declare these organizations to have been criminal.

Finally, Mr. President, the very anonymity which the Nazis intended to give to crime by the use of these organizations plagues us to the very end of this Trial. After these proceedings are concluded, this same organizational anonymity will plague the Allied powers in seeking to bring to book those who are responsible for these terrible offenses. It is a sobering fact that the vast majority of the crimes committed in the names of these organizations must go unpunished. But Nazism must not escape by this route which it rigged for itself; it must not survive in secret and undenounced organizational entities to prepare a new onslaught against civilization. By a declaration of criminality against these organizations, this Tribunal will put on notice not only the people of Germany, but the people of the whole world. Mankind will know that no crime

will go unpunished because it was committed in the name of a political party or of a state; that no crime will be passed by because it is too big; that no criminals will avoid punishment because there are too many.

On 28 February 1946, in this courtroom, the Chief Prosecutor for the United States of America, Mr. Justice Robert H. Jackson, made a statement before this Tribunal concerning the criminality of these organizations. That statement represents the attitude of the United States in these proceedings towards the organizations. I can do no better than to remind the Tribunal of it again. I quote from what Mr. Justice Jackson said on that occasion:

> "In administering preventive justice with a view to forestalling repetition of these crimes against peace, crimes against humanity, and war crimes, it would be a greater catastrophe to acquit these organizations than it would be to acquit the entire 22 individual defendants in the box. These defendants' power for harm is spent. That of these organizations goes on. If these organizations are exonerated here the German people will infer that they did no wrong and they will easily be regimented in reconstituted organizations under new names behind the same program.
>
> "In administering retributive justice it would be possible to exonerate these organizations only by concluding that no crimes have been committed by the Nazi regime. For these organizations' sponsorship of every Nazi purpose, and their confederation to execute every measure to attain these ends, is beyond denial. A failure to condemn these organizations under the terms of the Charter can only mean that such Nazi ends and means cannot be considered criminal and that the Charter of the Tribunal declaring them so is a nullity."

THE PRESIDENT: The Tribunal will adjourn.

[The Tribunal adjourned until Friday, 30 August 1946 at 1000 hours.]

TWO HUNDRED AND FIFTEENTH DAY

Friday, 30 August 1946

Morning Session

THE PRESIDENT: The Tribunal has had an application from Dr. Steinbauer for permission to put in an affidavit on behalf of the Defendant Seyss-Inquart. Have the Prosecution had an opportunity of seeing that affidavit yet, and have they any objection to it?

SIR DAVID MAXWELL-FYFE: My Lord, I do not think that all my colleagues have had an opportunity of looking through the affidavit yet. They got it late last night. So if Your Lordship could allow us an hour or two, we would be glad to report later in the day.

THE PRESIDENT: If you would do that, yes.

SIR DAVID MAXWELL-FYFE: If Your Lordship please.

DR. LATERNSER: Mr. President, may I just take up a few moments of the Tribunal's time? On the basis of a letter which I received last night, I am now in a position to prove that a written order existed forbidding all preparations for active bacteriological warfare.

I have already discussed this matter with Sir David Maxwell-Fyfe; the letter will be translated, and then the question of whether it should be admitted as evidence can be taken up.

I just wanted to mention this, Mr. President, so that the letter should not then be refused as coming too late.

THE PRESIDENT: Dr. Laternser, you mean that the letter will be translated and submitted to the Prosecution, and then they will let us know whether they are prepared to agree to the letter going in for what it is worth? But it must be done today.

DR. LATERNSER: Yes.

THE PRESIDENT: Very well.

General Telford Taylor.

BRIGADIER GENERAL TELFORD TAYLOR (Associate Trial Counsel for the United States): Mr. President and Members of the Tribunal:

Under the Indictment, the Prosecution seeks a declaration of criminality against six groups or organizations. For purposes of

clarity in marshalling the evidence and specifying the charges, this division into six parts is appropriate, since it accurately reflects the formal structure of the Third Reich.

In a deeper sense, however, the Third Reich was not sextuple. It was simpler than that. The Third Reich was a political machine and a military machine. It was embodied in, and sought its ends through, the Nazi Party and the Armed Forces. Its successes at home and abroad were achieved by these two instruments. The Wehrmacht owed its resurgence largely to the Nazi Party; the Party, in turn, would have been helpless and impotent without the Wehrmacht. As General Reinecke put it, the two pillars of the Third Reich are the Party and the Armed Forces, and each is thrown back on the success or downfall of the other.

Appendix B of the Indictment specifies the leaders and principal instrumentalities of the Party and the Armed Forces. From the Party, the Indictment specifies, for instance, the Corps of Political Leaders, and also the members of the SS, a principal executive arm of the Party. From the Armed Forces, the Indictment specifies the leading generals, to use the language of the Indictment, who had the principal authority for plans and operations.

The composition of this group of military leaders was described by the Prosecution during the case-in-chief, and little more needs be said by way of exposition. The Defense has taken the view that these military leaders do not constitute a group within the meaning of the Indictment. The arguments in support of this technical objection are, I believe, insubstantial, but I want to meet them directly and clearly.

A number of the points made by the Defense are based either on misunderstanding, or a deliberate misreading of the Indictment's definitions. Thus, several witnesses have told us that the "General Staff" consisted of young officers of relatively junior rank who acted as assistants to the commanders-in-chief. This involves a confusion with what is known to military people as the "General Staff Corps" of War Academy graduates. The Indictment does not include these officers, and the Prosecution made this clear at the outset. Insofar as this, or similar testimony, is an attack on the name which the Indictment applies to the military leadership group, this is an utterly insignificant point. There is no stock phrase in German or English for all the military leaders of the Wehrmacht; the Indictment combines a phrase "General Staff" and "High Command" as most descriptive of the chiefs of the four staffs of OKW, OKM, OKH, and OKL, all of whom were key figures in military planning, and the commanders-in-chief who directed operations. Together, they adequately comprehend the military leadership.

Several other minor and technical points merit only brief mention. It has been objected that the chart which was attached to the affidavits of Halder, Brauchitsch, and Blaskowitz does not accurately depict the chain of command. That is true; the chart was not intended to show the chain of command. The affidavits to which the chart is attached say nothing about chains of command and the Prosecution has not suggested anything of the kind. Equally irrelevant is the question of whether Keitel might have been shown in the same box with Hitler, instead of having a box to himself. None of these points about the chart involves the addition or subtraction of a single member of the group, or affects the Indictment's definition of the military leadership. Equally irrelevant is the contention that the list of members of the group includes some generals who held only temporary appointments as commander-in-chief and were never formally designated as such. This might later be relevant in the trial of these individuals, if they can show that they never really had the status and responsibility of a commander-in-chief, but is not important in contemplating the group as a whole.

Several affidavits submitted by the Defense point out that a few generals were members of the group for less than 6 months; that a number of them died or were removed or retired from their positions before the end of the war, and that the younger ones were not generals when the war started. This is all quite natural. We are concerned here with a seven-year period, during most of which there was a war, which is a hazardous and wearing occupation. During these years some generals died, others failed, still others fell out of favor; new faces appeared as replacements; the great increase in the number of German army groups and armies brought still other officers into the status of commander-in-chief. To the extent that in war the hazards were sharper and the failures more costly in the Wehrmacht than in politics, this turnover may have been correspondingly greater in the Wehrmacht than in the Party. But again, these questions are relevant only on the degree of responsibility of individual members, and not on the responsibility of the group itself.

A special point has been made of the fact that many members of the group did not become such until after 1942. The argument drawn from this circumstance is, I take it, that the generals who joined the group only after 1942 could not have taken part in the planning and launching of aggressive wars. It is true that by the end of 1942 the Wehrmacht, led by the accused group, had invaded or overrun all or a large part of every neighboring country except Switzerland and Sweden, so that further wars of aggression had become impracticable. I suppose that it might be urged with equal, if any, force that many Germans joined or rose to high rank in the

SS or the Party Leadership group after 1942. Certainly the argument ignores that the military leadership group, long after 1942, was a group whose official orders were to murder commandos and commissars and to achieve "pacification" by spreading terror. Many of the atrocities committed by the German Armed Forces occurred late in the war. Once again, this point has substance only in that individual late-comers to the group may show in other proceedings that they never learned of, and did not join in, the criminal activities. The group itself cannot escape responsibility by pleading that it continued to grow after the Third Reich's capacity to initiate aggressive wars had been exhausted.

The Defense tells us that the military leaders were not a "group," because they merely occupied official positions without any "unifying element." This is a factual question. Its solution is not advanced by nice linguistic points, such as whether the German word "Gruppe" means "group" or "number." I suppose that "group" means a number of persons chosen because of some likeness. Or, as Mr. Justice Jackson puts it, the members must have an "identifiable relationship" and a "collective general purpose." I suppose also that the "likeness" or "relationship" and the purpose must be meaningful under the London Agreement.

The generals who held the positions listed in the Indictment constituted the military leadership of the Third Reich. That is their "likeness," their "identifiable relationship," or their "unifying element." Their "collective general purpose" was to build up and train the Wehrmacht, and to make its plans and direct its operations.

The evidence to this effect is, I submit, conclusive and uncontradicted. Leading German generals—Brauchitsch and Halder—have said in sworn statements that those who held the positions listed in the Indictment had the "actual direction of the Armed Forces" and "were in effect the General Staff and High Command." The technical objections made later by the Defense with respect to the chart are quite irrelevant to this essential point.

The testimony of numerous generals, assuming its credibility, that the military leaders did not have any formal organization or any secret advisory council, is quite wide of the mark. The Prosecution has not charged this; nor has it charged that the military leaders were a political party, or that they had a set or uniform view on internal political matters.

Nor are we surprised to hear from some Defense witnesses that the Germans, like ourselves, found co-ordination within a single service easier to achieve than co-ordination between the Army, Navy, and Air Force. The mere existence of the OKW is sufficient proof of the importance which the Germans attached to inter-service collaboration, and numerous documents show that constant and

detailed planning and discussion took place between the three services. In any event, it is quite unnecessary to look behind the actual course of events. Surely no one would have suggested in 1941, after witnessing the co-ordinated use of tanks and stukas in Africa, and the team-play of all three services during the Norwegian invasion, that the German war effort lacked co-ordination.

From the standpoint of military planning, we are told by Halder that the most important part of the OKW was the Armed Forces Operations Staff, of which Jodl and Warlimont were the chief and deputy chief respectively. The field commanders, too, participated in planning. We know from Brauchitsch and Blaskowitz that the military plans for the attacks on Poland and other countries were submitted in advance to the commanders-in-chief of army groups and armies, so that OKH would have the benefit of their recommendations. Brauchitsch and Blaskowitz have also told us that, during operations, the OKH and the commanders-in-chief of army groups and armies were in continual consultation, and that the commanders-in-chief were repeatedly consulted by Hitler himself. The testimony of General Reinhardt is to the same effect. Contemporary documents clearly show the participation of the field commanders-in-chief in planning for the Polish campaign.

The commanders-in-chief of army groups and armies in occupied territories had executive power (Vollziehende Gewalt) within the areas under their command. Within those areas they were supreme, and had the power of life and death over the inhabitants. They had the responsibility for determining such questions as whether the Commissar and Commando Orders should be distributed, and if so, how widely and with what instructions.

To summarize, these generals were an aggregation of persons who directed the German Armed Forces, and whose collective purpose was to prepare it for and lead it in military operations. From time to time, when all the members met together, it was a congregation. The purpose and spirit of the London Agreement clearly bring such a body of men within the scope of Article 9 thereof. The Agreement established this Tribunal to try such offenses in the planning and waging of aggressive wars, and violations of the laws and customs of war. The German military leaders are charged, among other things, with developing the plans under which aggressive and illegal wars were initiated, and with directing the Armed Forces in the launching and waging of these wars. They are charged with circulating throughout the Wehrmacht orders directing the murder of certain types of prisoners, and with aiding, abetting, and joining in the murder and ill-treatment of the civilian population, all in violation of the laws and customs of war.

The argument of the Defense that the military leaders are not a "group" and are therefore immune to a declaration under Article 9

is, we submit, utterly unfounded, and flatly contrary to the plain purposes of the London Agreement. That agreement cannot be reasonably construed to exclude from the purview of Article 9 the leaders of one of the two chief instrumentalities of the Third Reich.

The Defense appears to contend that membership in this group was not voluntary. I say "appears to," because in one breath we are told that the generals could not withdraw from the positions they occupied, and in the next, that many of them resigned because of disagreements with Hitler.

The question is, I think, a simple one. We are not concerned here with the ordinary German conscript who made up the bulk of the Wehrmacht. We are concerned entirely with professional soldiers, and with the most zealous, ambitious, and able German officers in the business. Most of them chose a military career because it was in their blood; as Manstein put it, "they considered the glory of war as something great." They slaved at it and were devoted to their profession, and if they reached the status of commander-in-chief, they were, like Manstein, proud that an army had been entrusted to them. No one became a German commander-in-chief unless he wanted to.

It is true that in time of war a professional soldier cannot resign his commission or his post at his own free will. But this does not turn the professional officer into a conscript or make his status an involuntary one. No one becomes a professional officer without knowing in advance the obligations that will bind him in time of war. The fanatical Nazis who rushed to volunteer for the early Waffen-SS divisions or who voluntarily joined other para-military sections of the Party could not thereafter resign at will, but I have not heard it urged that they were conscripts or involuntary members. The members of the General Staff and High Command Group were keen professional warriors, who competed with others like themselves for the responsibilities and honors of being commanders-in-chief. They rose within the Wehrmacht just as an ambitious Party member might rise to be a Kreisleiter or Gauleiter.

In fact, retirement was easier for the commander-in-chief than anyone else in the Wehrmacht. The junior officer who protested against what was going on around him, might lose advancement or be moved to a less desirable assignment, or be court-martialed and disgraced. He was not given the option of retiring, and he was usually too young to plead illness plausibly. The commanders-in-chief were in a far better position. No War Office or War Department wants a field commander-in-chief who is in constant and fundamental disagreement with his instructions. Such a commander-in-chief must be removed. Yet often he has sufficient seniority, prestige, and acknowledged ability so that his demotion or disgrace

would be embarrassing, and retirement or acceptance of resignation is the best solution for all concerned.

And this is just what happened with some of the commanders-in-chief. The record is replete with testimony by or about commanders-in-chief who openly disagreed with Hitler on tactical matters and as a result of such disagreements were retired or allowed to resign. I note in passing that the record is notably barren of evidence that any commander-in-chief openly disagreed with Hitler—decisively on the issuance of orders which violated the laws of war, or who forced his retirement on account of these orders. At all events, it is quite clear that a commander-in-chief who wanted to retire could contrive to do so, whether by pleading illness or by honest blunt behavior. If he had the will, there was a way out. And it is worth noting that the three Field Marshals who testified before this Tribunal had all found or fallen into the way out, and the record shows that many others were equally successful and that few of them thereafter suffered serious harm on this account.

I pass now to the criminal activities. The Prosecution submits that the evidence before the Tribunal conclusively established the participation of the General Staff and High Command Group in accomplishing the criminal ends of the conspiracy, and in the commission of crimes under all parts of Article 6 of the Charter and under all Counts of the Indictment. We also submit that the criminal aims, methods, and activities of the group were of such a nature that the members may properly be charged with knowledge of them, and that, for the most part, they had actual knowledge.

I will speak first of the prewar period, or, more accurately, of the period ending in the spring of 1939, when detailed planning for the attack on Poland got under way. It is worth noting that during this early period the group defined in the Indictment never exceeded eight in number, and that four are defendants in this Trial.

I do not want to spend time retreading much-travelled roads. We know that during these years the military leaders built up the Wehrmacht and made it into a formidable military machine which struck terror into neighboring countries and later succeeded in overrunning most of them. There is not a shred of evidence to contradict the charge that members of the General Staff and High Command Group directed the building and assembling of this machine. Some witnesses have testified that the rearmament was for defensive purposes only, but the Wehrmacht's new strength was promptly used to support Hitler's aggressive diplomatic policy. Austria and Czechoslovakia were conquered by the Wehrmacht, even though there was no war. The events of 1939 to 1942 and the terrible offensive power of the Wehrmacht are a further and sufficient

answer, even without referring to Blomberg's official written statement in June 1937 that there was no need to fear an attack on Germany from any quarter.

Witnesses for the Defense have made much of the fact that the generals had little or no foreknowledge of the absorption of Austria. Many of these witnesses were not at the time members of the group, but the point is in any event not helpful, since the Anschluss was not timed in advance by the Germans, but was precipitated by Schuschnigg's surprise order for a plebiscite. That is why, as Manstein testified, plans for the march into Austria had to be quickly improvised. But the plans were drawn up by Manstein under the supervision of Beck (Chief of the General Staff of the Army, and a member of the group), and other members of the group were closely involved in the Anschluss, as were other generals who later became members.

As to the participation of the generals in the Munich crisis and occupation of the Sudetenland, the Defense's main point seems to be that Brauchitsch, Beck, and other generals opposed risking a war at that time. The record makes it quite clear that the generals' attitude was not based on any disagreement with the objective of smashing Czechoslovakia, or on any opposition to a diplomatic policy supported by military threats. Rather was it their attitude that the Wehrmacht was not as yet (in 1938) strong enough to face a war with major powers. The Defendant Jodl expressed it very clearly in his diary in drawing a contrast between "the Führer's intuition that we must do it this year and the opinion of the Army that we cannot do it as yet, since most certainly the Western Powers will interfere and we are not as yet equal to them."

The further contention of the Defense that there were no military preparations for the occupation of Czechoslovakia, and that the Commander-in-Chief of the Army gave no instructions in this regard, is completely incredible when weighed against contemporary documents of unquestioned authenticity, which have long been in evidence before the Tribunal and which the Defense cannot and did not attempt to explain away. The military directives and planning memoranda contained in the so-called "Fall Grün" file demolish any such contention, and fully reveal the extensive preparations being made by the Wehrmacht under the leadership of Keitel, Jodl, Brauchitsch, Halder, and others. Jodl's diary gives us further details about such matters as co-ordination of the air and ground offensives, timing of the D-day order, collaboration with the Hungarian Army, and order of battle. It also shows the personal participation of other members of the group and of other generals who later became members. Military preparation for absorption of the remainder of Czechoslovakia is also adequately shown by documents in evidence before the Tribunal.

One other point about this prewar period should be noted. The military leaders not only participated in the plans; they were delighted with the results. They were afraid of getting into a war before they were adequately prepared, but they wanted a big army, and they wanted the strategic and military advantages which Germany derived from Hitler's Austrian and Czechoslovakian successes. That is, in fact, why the Party leaders and the military leaders worked together; that is why the generals supported Hitler; that is why the Third Reich, through the Party and the Wehrmacht, was able to achieve what it did achieve. Leading German generals have told the Tribunal this in so many words. Blomberg tells us that before 1938-1939 the German generals were not opposed to Hitler. Blaskowitz says that all officers in the Army welcomed rearmament and therefore had no reason to oppose Hitler. Both of them tell us that Hitler produced the results that all the generals desired.

The testimony of Blomberg and Blaskowitz is in no way weakened by the statements of various Defense witnesses that many army officers disliked some of Hitler's internal policies and distrusted some of the Nazi politicians. It is too much to ask that all partners in crime should like and trust each other. That, in spite of these differences, the Third Reich came so close to imposing its dominion and evil theories on the world merely emphasizes the deep agreement between the Party and the military leaders on the most essential objectives—national unity and armed might—in order to accomplish territorial aggrandizement. This cannot be doubted, and for confirmation we need only look at the testimony of a witness called by the Defense (Colonel General Reinhardt, who was Chief of the Army Training Section before the war and later commanded a Panzer army and army group on the Eastern Front). When asked what was the attitude of the officers' corps toward Hitler, he replied: "I do not believe there was a single officer who did not back up Hitler in his extraordinary successes. Hitler had led Germany out of its utmost misery, both politically and in its foreign politics, and economically."

So we turn to the war itself. The group of military leaders specified in the Indictment becomes much larger; we are no longer concerned only with the generals in Berlin, but also with the war lords who commanded the Wehrmacht in the field—names far more familiar to and feared by the peoples of the territories overrun by the Germans. Names such as Blaskowitz, Von Bock, Von Kluge, Kesselring, Von Reichenau, Von Rundstedt, Sperrle, and Von Weichs. What do the generals say in defense of the attack on Poland? Some of their statements, like Manstein's explanation that the Poles might "carelessly" attack Germany, are merely laughable. About the best they can say is that they expected that Poland would give in without a struggle. Were this a defense, its credibility is dubious.

Hitler himself had made it clear to the military leaders that it was not a question of Danzig and the Corridor, but of living space and increasing the food supply under German exploitation. The generals could have hardly expected the Poles to give themselves up entirely without a struggle, and Hitler had said that there would be war and no repetition of the Czech affair.

But in any event it is not claimed by the Defense that the generals hoped for a "Blumenkrieg." The witnesses for the Defense have agreed that the German demands on Poland were to be enforced by military threats and armed might. There is no evidence that the generals opposed this policy of sheer hold-up. In fact, it is clear that they heartily endorsed it, since the Polish Corridor was regarded by them as a "desecration" and the regaining from Poland of former German territory as a "point of honor." And it has never been a defense that a robber is surprised by the resistance of his victim, and has to commit murder in order to get the money.

There is no controversy concerning the knowing participation of the members of the General Staff and High Command group in the planning and launching of the attack itself. Brauchitsch has described how the plans were evolved, and then passed to the field commanders-in-chief for their recommendations. We know, both from his own testimony and from contemporary documents, that Blaskowitz, one of the field commanders-in-chief, received the plans for the attack in June and thereafter perfected them in consultation with the army group and OKH. Rundstedt's chief of staff received the plans, and there can be no doubt that all the other commanders-in-chief did also. A week before the attack, all the members of the group met at the Obersalzberg for the final briefing.

As the war spread to other countries, and eventually over the entire continent of Europe, the Wehrmacht grew and many more army groups, armies, air fleets, and naval commands were created and the membership in the group was correspondingly enlarged. All three branches of the Wehrmacht participated in the invasion of Norway and Denmark, which was an excellent demonstration of "combined operations," involving the closest joint planning and co-ordination between the three services. The documents before the Tribunal show that this operation was a brain-child of the German admirals; the proposal originated with Raeder and other naval members of the group and, after Hitler's approval had been obtained, the plans were developed at the OKW. Numerous members of the group participated in its planning and execution. The testimony of several army commanders that they had no foreknowledge of the attack is, not surprisingly, a fact, since the OKH and the Army commanders-in-chief were all fully absorbed at the time in planning the much larger attack on the Low Countries and France. Only a few German divisions were used in Norway and

Denmark and, since it was a "combined operation," the plans were developed in OKW, not OKH.

Dr. Laternser's defense of the Norwegian attack on the basis that it was a preventive move to forestall an English invasion of Norway, might have some superficial plausibility if there were any evidence that the Norwegian invasion was improvised to meet an emergency. But it is totally and wantonly incredible in the fact of documents which show that the Norwegian invasion had been under discussion since October 1939, that active planning began in December, that on 14 March Hitler was still hesitant about giving the order for the attack because he was "still looking for some justification," and that all through the weeks preceding the Norwegian attack there was discussion within the General Staff group as to whether it might not be preferable to initiate the general Western offensive against France and the Low Countries before undertaking the Norwegian campaign.

As for the major attack in the West, it appears from the testimony of Defense witnesses that Hitler wanted to attack in the fall of 1939, and that Brauchitsch and other generals persuaded him to postpone until the spring of 1940. This postponement indeed shows that the generals had considerable influence with Hitler, but hardly excuses the later attack. When the spring of 1940 arrived, according to Manstein, "the offensive in the West, from the point of view of the soldier, was absolutely inevitable." There is no evidence that a single German commander protested against or opposed the flagrant and ruthless violation of the neutrality of the Low Countries.

The explanations of the Defense concerning the crimes against peace are labored and implausible, and are in conflict equally with the documents before the Tribunal and with the history of the years in question. Nor is it true that the military leaders were mere puppets without influence on Hitler or the course of events. Naturally there were disagreements not only between Hitler and the Wehrmacht, but within the Wehrmacht itself. If Hitler prevailed at times, so at times did the Wehrmacht, whether it was to postpone the Western offensive or to launch the attack on Denmark and Norway. Despite the attempt to make the contrary appear, Hitler was not so stupid as to act without the benefit of military advice. One need only look at Hitler's directive to the military leaders of 12 November 1940, written after the successful conclusion of the Western offensive, in which Hitler discusses very tentatively his future plans in France, a possible offensive in Spain, whether Madeira and the Azores should be occupied, what assistance should be given the Italians in North Africa, what to do in Greece and the Balkans, what the future might hold with regard to the Soviet

Union, and whether to invade England in the spring of 1941. Hitler concluded:

> "I shall expect the commanders-in-chief to express their opinions on the measures anticipated in this directive. I shall then give orders regarding the method of execution and synchronization of the individual actions" (444-PS).

No, the leaders of the Wehrmacht were not puppets. If the generals owed their opportunity to rebuild the Wehrmacht largely to Hitler and the Nazis, it is very true that Hitler was utterly dependent on the generals for carrying out his plans. Brauchitsch has pointed out that "the carrying out of the orders that were given to the Army and to the army groups required such a high knowledge of military matters, and such ability and psychological understanding, that there were only a few people who were actually able to carry out such orders." And it is worth noting also that despite the very real and natural friction between the war lords and a former corporal, Hitler never, until July 1944, turned outside the ranks of the Army for his commanders-in-chief. Even during these final desperate months only four outsiders, Himmler himself and three others from the Waffen-SS, achieved the coveted distinction.

Nor was the Wehrmacht that swarmed over the continent of Europe led by reluctant men. These aggressive wars were launched and waged by men who worshipped armed might, and wanted to extend the hegemony of Germany. That is, at bottom, why the Nazis and the Wehrmacht leaders gave the Third Reich its unity. I recall the Tribunal's attention to Admiral Fricke's memorandum of June 1940:

> "It is too well known to need further mention that Germany's present position in the narrows of the Heligoland Bight and in the Baltic—bordered as it is by a whole series of states and under their influence—is an impossible one for the future of Greater Germany. The power of Greater Germany in the strategic areas acquired in this war should result in the existing population of these areas feeling themselves politically, economically, and militarily to be completely dependent on Germany. If the following results are achieved—that expansion is undertaken (on a scale I shall describe later) by means of the military measures for occupation taken during the war, that French powers of resistance (popular unity, mineral resources, industry, and armed forces) will be so broken that a revival must be considered out of the question, that the smaller states such as the Netherlands, Denmark, and Norway are forced into a dependence on us which will enable us in any circumstances and at any time easily to occupy these countries again—then in practice the same, but psychologically much more, will be achieved.

"The solution, therefore, appears to be to crush France, to occupy Belgium, part of Northern and Eastern France, to allow the Netherlands, Denmark, and Norway to exist on the basis indicated above" (C-41).

In the face of documents such as this one, we have nevertheless heard the generals say over and over again that they were never told about what was going on and heard about events for the first time over the radio. Over and over again they have protested that they never heard about certain things until they were lodged in the jail at Nuremberg. Military figures, like so many others in this case, have not hesitated to put the responsibility for things which they cannot deny or avoid on the shoulders of one or two people whom they seek to portray as peculiar and unrepresentative of the group. The common denominator of these scapegoats is that they are all dead. The dead Reichenau is made to share the blame with the other dead who cannot speak—Hitler, Himmler, Dr. Rasche, and the rest. These defenses are mean and they are utterly incredible. The world will never believe them.

No group of men was more intimately concerned than were the military leaders with what was going on in and around Germany in the years before the war. The military leaders now tell us that they neither knew, nor cared to know, nor ought to have known, about these things. If what they say is true, then they are utterly unique, for nearly all the world had heard something about these things. One of the most remarkable things about this Trial has been that, instead of a series of startling revelations, the documents assembled here and the labor devoted to them have served to confirm what was already known or suspected throughout the world many years ago. I cannot suppose that anybody will ever subscribe to the view which the military leaders have been forced by circumstances to put forward here in order to try and clear themselves from a stain which is far too dark to be effaced.

The crimes against peace in which the General Staff and High Command group participated led inevitably to the war crimes which followed. Without the participation of this group in the crimes against peace, there would not have been any war crimes. It is not a change from one subject to another, but only the inevitable chain of causation, which leads us now to consider the methods by which the Wehrmacht waged the wars it had launched.

We do not, of course, suggest that the hands of every German soldier were plunged into innocent blood, or that the rules of war and the laws of decency were disregarded by every German commander. But we do say that the nature and extent of the atrocities ordered by the leaders of the Wehrmacht and thereafter perpetrated by it in many countries of Europe, reveal and prove a calculated

indifference on the part of the military leaders to the commission of crimes.

The uncontested fact is that the Supreme Command of the Wehrmacht, under instructions from Hitler as its Supreme Commander, issued various orders which flagrantly contravened the rules of war. These included the orders for the shooting of commandos and political commissars, the orders to "pacify" the occupied territories of the Soviet Union by spreading terror, and others. The Defense does not dispute the issuance of these orders, and it does not and cannot contest their criminality. Rather are we told that the German commanders were honorable soldiers, that they disapproved of these orders, that they tacitly agreed not to execute the orders, and that the orders were not executed.

Let us test this defense against the facts in the case of the Commando Order. The original order and the other relevant documents are all in evidence. In October 1942, Hitler ordered that enemy commandos were to be slaughtered to the last man; that even if they surrendered, they were none the less to be shot immediately, unless interrogation were necessary, in which case they were to be shot thereafter. The order was not a purposeless piece of criminality; Allied commando operations were doing serious harm to the German war effort, and Hitler thought this order would act as a deterrent.

The order was issued from the OKW and distributed to all three branches of the service, Army, Navy, and Air Force. There is ample evidence that it was widely distributed and well known within the Wehrmacht. Rundstedt, commander-in-chief in the West, reported on 23 June 1944 that "the treatment of enemy commando groups has so far been carried out according to the Hitler order." Two years later, under different circumstances, Rundstedt testified that he "evaded" and "sabotaged" the order, and that it was not carried out. But we know from the documents that it was carried out. Pursuant to this order, British and Norwegian commandos were executed in Norway in 1942 and 1943; American commandos were shot in Italy in 1944; Allied soldiers were executed in Slovakia in 1945. And, in the nature of things, the order must have been carried out in other instances of which, unhappily, no trace now remains.

In the light of these documents, what remains of the defense? Stated most favorably, merely that, because some of the military leaders disapproved the order, it was not executed as often as it might otherwise have been. But this defense is worse than worthless; it is shameful.

We must not forget that to kill a defenseless prisoner of war is not only a violation of the rules of war. It is murder. And murder is not the less murder whether there is one victim, or 55 (which is the number of slaughtered commandos shown by the documents),

or Ohlendorf's 90,000. Crime has been piled upon crime in this case until we are in danger of losing our sense of proportion. We have heard so much of mass-extermination that we are likely to forget that simple murder is a capital offense.

The laws of all civilized nations require that a man go to some lengths to avoid associating himself with murder, whether as an accomplice or accessory or co-conspirator. And these requirements can reasonably be applied to the German military leaders. Before this Tribunal they have made much of their traditions of honor, decency, courage, and chivalry.

Under German military law, a subordinate is liable to punishment for obeying the order of a superior if the subordinate knows that the order requires the commission of a general or a military crime. The Commando Order required the commission of murder, and every German officer who handled the order knew that perfectly well.

When Hitler directed the issuance of this order, the leaders of the Wehrmacht knew that it required the commission of murder. The responsibility for handling this question lay squarely on the group defined in the Indictment. The chiefs at OKW, OKH, OKL, and OKM had to decide whether to refuse to issue a criminal order or whether to pass it on to the commanders-in-chief in the field. The commanders in the field, Army, Navy and Air Force, had to decide whether to execute it or refuse to execute it, and whether to distribute it to their subordinates.

One can imagine that there were many meetings and telephone conversations among various members of the group to discuss this matter. There is no evidence that a single member of the group openly protested or announced his refusal to execute it. The general result was that the order was distributed throughout a large part of the Wehrmacht. This put the subordinate commanders in the same position as their superiors. We are told that some of the generals tacitly agreed not to carry out the order. If so, it was a miserable and worthless compromise. By distributing the order with "secret" or "tacit" understandings, the commanders-in-chief merely spread the responsibility and deprived themselves of any effective control over the situation. A tacit agreement to disobey cannot be so widely circulated. The inevitable result, and the result proved by the documents, was that the order was carried out and innocent men were murdered.

Because he was responsible for enforcing the Commando Order, General Dostler was tried, convicted, and shot to death. For the same crime, General Falkenhorst now stands condemned to die. But the responsibility for these murders is shared by Falkenhorst and Dostler with every German commander-in-chief at home or in the

field who allowed this order to become the official law of the Wehrmacht and participated in its distribution. On this charge alone, I submit, the General Staff and High Command group is proved to have participated directly, effectively, and knowingly in the commission of war crimes.

On the Eastern Front, the callous indifference of the German war lords to violations of the laws of war and to mass-suffering and death produced results equally criminal and, because on a grander scale, far more horrible. The atrocities committed by the Wehrmacht and other agencies of the Third Reich in the East were of such staggering enormity that they rather tax the power of comprehension. Why did all these things happen? Analysis will show, I believe, that this was not simply madness and bloodlust. On the contrary, there was both method and purpose. These atrocities occurred as the result of carefully calculated orders and directives, issued prior to or at the time of the attack on the Soviet Union, which form a coherent, logical pattern.

One need not here consider the reasons why Hitler, in the fall of 1940, began to consider seriously making an attack on the Soviet Union. We do know that, beginning in September of 1940, he was constantly discussing this possibility with the military leaders, who had ample opportunity to express their views to him. We know that there was a division of opinion among the generals and admirals; none of them appear to have been much governed by moral scruples, but some thought the attack unnecessary, and others were dubious that a quick victory could be achieved. However, still others agreed with Hitler that the attack should be launched. When Hitler, in consultation with and with the support of part of the military leadership, decided to make the attack, there is no indication that any leading generals stood out decisively against the decision, and they embarked on the war with the utmost determination to carry it through to a successful conclusion.

Whatever may have been the reasons which prompted the attack, there was one factor which, once the decision had been made, became a vitally important object and purpose of the attack. That was to seize large areas of the Soviet Union and to exploit these areas for the material benefit of Germany. To accomplish this, it was desired to "pacify" and crush all opposition in the occupied territory as rapidly as possible and with a minimum expenditure of manpower and material, to obliterate the Soviet political system and set up new German-supported regional political administrations, and to revise and expand the productive resources of these areas and convert them to the uses of the Third Reich.

THE PRESIDENT: The Tribunal will adjourn.

[A recess was taken.]

GEN. TAYLOR: Mr. President, at our recess I was describing the program for the exploitation and pacification of the Occupied Eastern Territories. Hitler had very definite ideas as to how this program should be carried out, and these ideas were partially embodied in the series of directives and orders with which the Tribunal is now familiar. Some of these orders were to be executed directly by the Wehrmacht, some of them by other agencies of the Reich, but in co-ordination with and supported by the Wehrmacht.

For the rapid and economical "pacification" of occupied territories, after Hitler had consulted Brauchitsch, the OKW issued the order of 22 July 1941, which ordered the commanders-in-chief to establish security, not by sentencing the guilty in courts of law, but by spreading "such terror as is likely, by its mere existence, to crush every will to resist amongst the population." For the same purpose, the OKW issued the order of 13 May 1941, which suspended the use of military courts for punishing offenses by enemy civilians, and directed that the troops themselves should accomplish pacification by "ruthless action," the most extreme methods, and "collective despotic measures" against localities. In furtherance of these abominable policies, it was further ordered that the German troops who committed offenses against Soviet civilians were not to be punished at all, unless punishment were necessary to maintain discipline and security or prevent waste of food or material. Every commissioned officer on the Eastern Front was to be instructed promptly and emphatically to behave in accordance with these principles. The language of the order was calculated to incite officers and men alike to the most despicable behavior.

In these two orders we can see the basic composition of this revolting picture. In more detail, Hitler expected particularly bitter opposition to his new Russian policies and regimes from officers and agents of the Soviet Government and from all Jews. These elements he decided to exterminate utterly, as they would otherwise remain a constant focal point of resistance within the occupied areas.

In furtherance of these policies of mass murder, the OKW issued the order for the killing of all political commissars who might be captured. This, like the Commando Order, required the murder of defenseless prisoners of war. And in this case the military leaders behaved in precisely the same fashion. Not one commander-in-chief openly protested or openly announced his refusal to execute the order. A few commanders may have refused to distribute it down to the troops, but it was distributed and became well known over the entire Eastern Front. As in the case of the Commando Order, we are told that by tacit agreement among the commanders it was not carried out. The evidence in support of this is that particular commanders or other officers never personally knew of an instance where a captured commissar was shot. We may assume the truth of

some of these statements, but it is none the less totally incredible, in view of the order's wide distribution, and the deliberate brutalizing of the German soldier by such orders as these, and such directives as Reichenau and Manstein issued to their troops, that the Commissar Order was not carried out in many cases. It must have been.

The campaign of mass-extermination was extended from commissars to all Communists by the OKW order of 16 September 1941, which directed that all cases of resistance to the Wehrmacht, no matter what the circumstances, should be attributed to Communists and that "the death penalty for 50 to 100 Communists should generally be regarded as suitable atonement for one German soldier's life."

Terrorization and exploitation of the Russian countryside and extermination of undesired elements obviously could not be carried out by the Wehrmacht alone. Many other agencies of the Third Reich had an important share in this far-flung, evil program. Among these other agencies, perhaps the most unspeakable were the special task forces of Himmler, known as Einsatzgruppen and Einsatzkommandos. The mission of these units was to assist in "pacification" and pave the way for the new political regime by stamping out opposition; and particularly by slaughtering Communists and Jews. We know, both from contemporary documents and from the confession of the leader of one of these units, with what terrible fidelity that mission was performed.

The particular missions of the Einsatzgruppen were assigned by Himmler, but these units could not simply be turned loose in the operational and rear areas of a conquered territory without administration, supply, communication facilities, and sufficient control by the military to ensure that their tasks would be co-ordinated with, and at least would not obstruct, military operations. The Defense has made every effort to conceal this plain fact, but any soldier, and indeed anyone who gives the matter thought, must know that it is true.

And this is quite clear from the documents. The OKW Directive for Special Areas of 13 March 1941 provided that Himmler could send these units into operational areas in order to perform "special tasks for the preparation of the political administration, tasks which result from the struggle which has to be carried out between two opposing political systems." But the order carefully specified that the execution of Himmler's tasks should not disturb military operations, and that the units were subject to the supreme authority of the commander-in-chief of the army in the operational area. The billeting and feeding of Himmler's units was to be furnished by the Army. It was directed that further details should be arranged between the OKH and Himmler. Brauchitsch has confirmed that

subsequently the details were settled at a conference between Heydrich and General Wagner of OKH, and Schellenberg, who drafted the agreement, has described its contents.

These infamous gangs of murderers, in short, were fed and housed by the Army and would have been helpless without the Army's support. The testimony of some of the German generals that these killings of thousands upon thousands took place without their knowledge would make one smile, were not the truth so black and sickening. A military area, even far behind the front, is not a desert where one can wander to and fro unchallenged. It is a veritable maze of rear headquarters, trucking companies, ammunition dumps, supply depots, signal installations, hospitals, gasoline dumps, railway guards, prisoner-of-war stockades, anti-aircraft batteries, airfields, engineers, ordnance units, motor pools—a thousand and one other troops that furnish the base of operations and the line of communications for an army in the field. The smooth functioning of this vast and complicated train is vital to the success of the combat troops. The enemy knows this, and is eager both to disrupt it and to extract intelligence from it through sabotage groups, agents, and partisans. Therefore the occupying forces guard their installations, patrol the roads and railways, and garrison the centers of population. Travellers, no matter what uniform they wear, are stopped and questioned and asked for identification. These troops in the rear come in close contact with the civilian population, and know what is going on among them. Military Police and counter-intelligence troops police the area and report on its condition to higher headquarters.

Furthermore, a commander in the field dislikes to have autonomous units under special orders from home at large in his area. This is particularly true when, as here, the units came as servants of Himmler, whom the German generals say they thought to be their enemy, intent on usurping their powers and functions. The idea that Himmler's extermination squads flitted through Russia, murdering Jews and Communists on a large scale, but secretly and unbeknown to the Army, is utterly preposterous—the desperate sparring of men who have no recourse but to say what is not true.

Let us look again at the pattern as a whole. Most of it was written down in plain German before the attack on Russia was launched. Terrorize the populace, let acts of violence and brutality on the part of German troops go unpunished, kill the commissars, kill 100 Communists whenever you can find an excuse, make way for and feed and house Himmler's squads performing "tasks which result from the struggle which has to be carried out between two opposing political systems." And the political system for which the

commanders-in-chief were fighting had already been exterminating Communists and Jews and boasting about it for years.

The German generals were bright enough to understand this pattern. In any event, it had been explained to them. The OKW directive suspending the courts-martial ended with a directive to the military leaders to inform their legal advisers about the verbal information in which the political intentions of the High Command were explained to the commanders-in-chief. The Defendant Rosenberg, at the time of or before the invasion, advised Keitel, Jodl, Warlimont, Brauchitsch, and Raeder about his "political and historical conception of the Eastern problem." According to Brauchitsch, Hitler had explained the ideological nature of the war to all the commanders-in-chief in conference at the time the Commissar Order was issued. The affidavits of Generals Röttiger, Rode, and Heusinger further confirm the obvious conclusion that the whole pattern of "pacification" was well understood throughout the German military leadership.

An army demoralized and brutalized by criminal orders and evil doctrines will behave in a brutal way in circumstances where they have no explicit orders. I have not, for instance, seen a written order that Soviet prisoners who could not march should be shot. I am prepared to believe that some German generals treated prisoners as well as they could, but I also find convincing the complaint of the young German lieutenant that efforts to pacify and exploit the Ukraine were being frustrated because:

> "... prisoners were shot when they could not march any more, right in the middle of villages and some of the bigger hamlets, and the corpses were left lying about, and the population saw in these facts what they did not understand and which confirmed the worst distortions of enemy propaganda."

For the same reasons, the anti-partisan warfare was carried out brutally, and with enormous loss of life among innocent civilians. As the divisions of the German Army were transferred between the Eastern and Western Fronts, the practices on each front spread to the other. Slaughter at Kherson and Kovno was reflected in massacre at Malmedy and Oradour. The German Army had been demoralized by its leaders. I recall to the Tribunal that a high German military judge, as early as 1939, granted "extenuating circumstances" to an SS officer who, without any reasons, shot 50 Jews in a Polish synagogue because:

> "... as an SS man, particularly sensitive to the sight of Jews, and to the hostile attitude of Jewry to the Germans, he therefore acted quite thoughtlessly in youthful rashness."

One must remember the observation before this Tribunal of SS Obergruppenführer Von dem Bach-Zelewski, who pointed out that:

> "... when for years, for decades, the doctrines are preached that the Slav race is an inferior race and Jews not even human, then such an explosion is inevitable."

The defense of these charges is the same as in the case of the Commando Order. A mass of affidavits have been submitted by individual commanders-in-chief and subordinate officers in which they express their abhorrence of these orders and profess that they did not execute them. Again we hear of tacit understandings, even in the face of evidence as to the slaughter which the orders caused. It makes one gasp that such a defense can be put forward at all, apparently without shame.

Again I say that the responsibility lies squarely on the group specified in the Indictment. Keitel, Jodl, Brauchitsch, Göring, and their colleagues at the center of affairs circulated these malignant orders, the criminality of which a child could see. Kleist, Kluge, Rundstedt, Reichenau, Schobert, Manstein, and the other field commanders-in-chief distributed them to their subordinate officers. No secret agreements could forestall the terrible result which followed inevitably.

Is it really too much to ask that the commanders-in-chief should have refused to distribute these orders? As soldiers they were bound to obey their Supreme Commander, but their own law and code says that it is the duty of every soldier to refuse to obey orders which he knows to be criminal. This is hard for the ordinary soldier acting under pistol-point orders from his lieutenant. It is far less difficult for the commander-in-chief; he is expected to be mature, educated, accustomed to responsibility, and disciplined to be steady and unflinching when put to a test. Under their own law and under the traditions they are so shameless as still to vaunt, the leaders were in duty bound to reject these orders. Their failure caused suffering and death to hundreds of thousands; their failure resulted directly in countless murders and other brutal crimes; and they, far more than the soldiers whom these orders led into crime, are the real criminals.

Hitler needed the commanders-in-chief; he needed them desperately and would have been helpless without them. They could have held securely and firmly to the standards which every soldier, and indeed every man, is expected to meet. And it was not, in most cases, fear of Hitler that caused them to betray these standards. They were ready enough to disagree with Hitler on other matters which they regarded as more important. They did not want to risk a breach with Hitler over what they callously regarded as a minor matter. They were intent on "larger" things—

the conquest of Europe—on which they and Hitler were in agreement.

Some of the military leaders, we cannot tell how many, were willing to go much further and to stand sponsor for Nazi ideology. Reichenau and Manstein lent their names and prestige shamelessly in order to advance these vile doctrines. We cannot capture all the orders; we cannot tell how many German commanders-in-chief there are who, like Manstein, unctuously protesting their disapproval of Nazi doctrine, could be confronted with their own nauseating manifestoes.

We may assume, for the sake of argument, that many German commanders-in-chief disliked the pattern of orders and doctrines which the evidence here has unfolded. He who touches filth is not excused because he holds his nose. For reasons which appeared to them sufficient, the German military leaders helped to weave this pattern. It is just this calculated indifference to crime which makes their conduct so unspeakable. Those individual commanders-in-chief, if any, who can show clean hands may come forth and clear themselves. But the military leaders as a group, I submit, are proved beyond doubt to have participated directly, effectively, and knowingly in numerous and widespread war crimes and crimes against humanity.

Under Articles 9 and 10 of the London Agreement for the Trial of Major War Criminals, Keitel and Raeder and the other military defendants are on trial not only as individuals, but as representatives of the German military leadership. The military defendants committed their crimes as military leaders and hand-in-hand with others. It is in their representative capacity that the military leaders in the dock are truly important.

The evidence against this group is so complete and compelling that their attempts at defense must be desperately and inconsistently contrived. When called to account as a group for their crimes the famous German General Staff disintegrates, like a child's puzzle thrown on the floor, into 130 separate pieces. We are told that there is nothing there. Called upon to state their views on Hitler, aggressive war, or other unpleasant subjects, the pieces reassemble themselves into pattern instantly and magically. With true German discipline, the same words come from every mouth. When the question is the participation of the Wehrmacht in killing Jews, they indignantly deny that their soldiers would do such things. When the question is the enforcement of law and discipline within the Wehrmacht, we are met by affidavits saying that German soldiers who killed Jews were court-martialed and shot. Charged with responsibility as a group, they plead immunity on the ground that they could not resign and that their status was therefore

involuntary. Seeking to establish that they disapproved the policies of Hitler, they boast that many of their number who expressed their opposition were allowed or requested to resign. The inconsistency of their appeal to the soldier's oath of obedience is particularly shameless. Charged with launching aggressive wars against neighboring countries, they plead the oath in their defense. Accused of crimes committed during the war, they take credit to themselves for refusing to obey criminal orders. And so it is represented that the soldier who in time of peace was completely bound by his oath to give unquestioning obedience, regardless of consequences, to a perjured head of state, could nevertheless, when his country was at war and obedience supposedly far more necessary, dabble in secret disobedience and thereby shift the blame and responsibility for the murder of commandos and commissars onto other shoulders.

Let us look once more at these military leaders whose actions we have just examined. They are a group in more ways than one. They are more than a group; they are a class, almost a caste. They have a course of thought and a way of life. They have distinctive qualities of mind, which have been noted and commented on by the rest of the world for many decades, and which have their roots in centuries. They have been a historical force, and are still to be reckoned with. They are proud of it.

To escape the consequences of their actions, these men now deny all this. But in their very denial, the truth is apparent. Their group spirit and unity of outlook and purpose is so deep that it drops from their lips willy-nilly. Read their testimony; always they refer to themselves as "we" or "we old soldiers," and they are forever stating "our" attitude on this or that subject. Rundstedt's testimony is full of such expressions of the attitude of the German military leaders as a group on a great variety of questions. Manstein told us that "we soldiers mistrusted all parties"; "we all considered ourselves the trustees of the unity of Germany"; and "the National Socialist aim of unification was according to our attitude, though not the National Socialist methods."

What are the characteristics of the German military leaders? They have been familiar to students of history for a long time; books have been written by them and about them. They are manifest in the documents and testimony before the Tribunal.

They are careful observers of Germany's internal politics, but their tradition and policy is not to indentify themselves with parties or internal political movements. This is the only true note in the refrain, which has been sung so often at this Trial, that "we were soldiers and not politicians." They regard themselves as above politics and politicians. They are concerned only with what they

consider to be the deeper, unchanging interests of Germany as a nation. As Manstein put it:

> "We soldiers mistrusted all parties, because every party in Germany placed its own interests above the interests of Germany. We all considered ourselves the trustees of the unity of Germany in this respect. . . ."

The German military leaders are deeply interested in foreign politics and diplomacy. Any intelligent professional officer must be. Training is conducted, equipment is built, and plans are evolved in the light of what is known about the military potential and intentions of other countries. No officers in the world were more aware of this than the Germans; none studied the international scene as closely or with such cold calculation. It was their mentor, Clausewitz, who described war as an instrument of politics.

The German military leaders want Germany to be free from political fluctuations, and a government which will mobilize German resources behind the Wehrmacht and inculcate in the German public the spirit and purposes of militarism. This is what Rundstedt meant when he said that: "The National Socialist ideas which were good were usually ideas which were carried over from old Prussian times and which we had known already without the National Socialists." That is what Manstein meant by the "unity" of Germany.

The German military leaders believe in war. They regard it as part of a normal, well-rounded life. Manstein told us from the witness box that they "naturally considered the glory of war as something great." The "considered opinion" of OKW in 1938 recited that:

> "Despite all attempts to outlaw it, war is still a law of nature which may be challenged but not eliminated. It serves the survival of the race and state or the assurance of its historical future.
>
> "This high moral purpose gives war its total character and its ethical justification."

These characteristics of the German military leaders are deep and permanent. They have been bad for the world, and bad for Germany too. Their philosophy is so perverse that they regard a lost war, and a defeated and prostrate Germany, as a glorious opportunity to start again on the same terrible cycle. Their attitude of mind is nowhere better set forth than in a speech delivered by General Beck before the German War Academy in 1935. The audience of young officers was told that "the hour of death of our old magnificent Army" in 1919 "led to the new life of the young Reichswehr," and that the German Army returned from the first World War "crowned with the laurels of immortality." Later on

they were told that if the military leaders have displayed intelligence and courage, then losing a war "is ennobled by the pride of a glorious fall." In conclusion, they are reminded that Germany is a "military-minded nation" and are exhorted to remember "the duty which they owe to the man who recreated and made strong again the German Wehrmacht."

In 1935, that man was Hitler. In previous years it was other men. The German militarist will join forces with any man or government that offers fair prospect of effective support for military exploits. Men who believe in war as a way of life learn nothing from the experience of losing one.

I have painted this picture of the German military leaders not because it is an unfamiliar one, but because it is so familiar that it may be in danger of being overlooked. We must not become preoccupied with the niceties of a chart or details of military organization at the expense of far more important things which are matters of common knowledge. The whole world has long known about and suffered at the hands of the German military leadership. Its qualities and conduct are open and notorious. Is the world now to be told that there is no such group? Is it to hear that the German war lords cannot be judged because they were a bunch of conscripts? We have had to deal seriously with such arguments only because there are no others.

That the case against the German militarists is clear does not make it the less important. We are at grips here with something big and evil and durable; something that was not born in 1933, or even 1921; something much older than anyone here; something far more important than any individual in the dock; something that is not yet dead and that cannot be killed by a rifle or a hangman's noose.

For 9 months this courtroom has been a world of gas chambers, mountains of corpses, human-skin lampshades, shrunken skulls, freezing experiments, and bank vaults filled with gold teeth. It is vital to the conscience of the world that all the participants in these enormities shall be brought to justice. But these exhibits, gruesome as they are, do not lie at the heart of this case. Little will be accomplished by shaking the poisoned fruit from the tree. It is much harder to dig the tree up by the roots, but only this will in the long run do much good.

The tree which bore this fruit is German militarism. Militarism is as much the core of the Nazi Party as of the Wehrmacht itself. Militarism is not the profession of arms. Militarism is embodied in the "military-minded nation" whose leaders preach and practice conquest by force of arms, and relish war as something desirable

in itself. Militarism inevitably leads to cynical and wicked disregard of the rights of others and of the very elements of civilization. Militarism destroys the moral character of the nation that practises it and, because it can be overthrown only by its own weapons, undermines the character of nations that are forced to combat it.

The wellspring of German militarism through the years had been the group of professional military leaders who have become known to the world as the "German General Staff." That is why the exposure and discrediting of this group through the declaration of criminality is far more important than the fate of the uniformed individuals in the box, or of other members of this group as individuals. Keitel and Raeder and Rundstedt and Kesselring and Manstein have shot their bolt. They will not lead the legions of the Wehrmacht again.

What is really at stake now is not the lives of these particular men, but the future influence of the German General Staff within Germany, and, consequently, on the lives of people in all countries. That is why it was declared at Yalta:

> "It is our inflexible purpose to destroy German militarism and Nazism, and to ensure that Germany will never again be able to disturb the peace of the world. We are determined to disarm and disband all German armed forces; break up for all time the German General Staff that has repeatedly contrived the resurgence of German militarism."

The first steps toward the revival of German militarism have been taken right here in this courtroom. The German General Staff has had plenty of time to think since the spring of 1945, and it well knows what is at stake here. The German militarists know that their future strength depends on re-establishing the faith of the German people in their military powers and in disassociating themselves from the atrocities which they committed in the service of the Third Reich. Why did the Wehrmacht meet with defeat? Hitler interfered too much in military affairs, says Manstein. What about the atrocities? The Wehrmacht committed none. Hitler's criminal orders were discarded and disregarded by the generals. Any atrocities which did occur were committed by other men, such as Himmler, and other agencies, such as the SS. Could not the generals have taken any steps to prevent Germany's engulfment in war and eventual destruction? No; the generals were bound by their oath of obedience to the Chief of State. Did not an SS general say that the Field Marshals could have prevented many of the excesses and atrocities? The reaction is one of superiority and scorn: "I think it is impertinent for an SS man to make such statements about a Field Marshal," says

Rundstedt. The documents and testimony show that these are transparent fabrications. But here, in embryo, are the myths and legends which the German militarists will seek to propagate in the German mind. These lies must be stamped and labeled for what they are now while the proof is fresh.

This is as important within our own countries as it is here in Germany. Militarism has flourished far more widely and obstinately in Germany than elsewhere, but it is a plant which knows no national boundaries; it grows everywhere. It lifts its voice to say that war between East and West, or Left and Right, or White and Yellow, is inevitable. It whispers that newly devised weapons are so terrible that they should be hurled now lest some other country use them first. It makes the whole world walk under the shadow of death.

German militarism, if it comes again, will not necessarily reappear under the aegis of Nazism. The German militarists will tie themselves to any man or party that offers expectation of a revival of German armed might. They will calculate deliberately and coldly. They will not be deterred by fanatical ideologies or hideous practices; they will take crime in their stride to reach the goal of German power and terror. We have seen them do it before.

The truth is spread on the record before us, and all we have to do is state the truth plainly. The German militarists joined forces with Hitler and with him created the Third Reich; with him they deliberately made a world in which might was all that mattered; with him they plunged the world into war, and spread terror and devastation over the continent of Europe. They dealt a blow at all mankind; a blow so savage and foul that the conscience of the world will reel for years to come. This was not war; it was crime. This was not soldiering; it was savagery. These things need to be said. We cannot here make history over again, but we can see that it is written true.

M. AUGUSTE CHAMPETIER DE RIBES (Chief Prosecutor for the French Republic): Mr. President, Your Honors:

We have asked you to condemn the leaders responsible for the drama which has bathed the world in blood. Today, when we ask you to declare as criminal the organizations which served as instruments for their designs, we seek from your justice the moral condemnation of an entire coherent system, which has brought civilization into the gravest danger it has known since the collapse of the Roman world.

And we attach as much importance to the sentence which we are asking for today as to the one which we requested yesterday.

For, if we believe it necessary that the guilty should be punished, we think it no less salutary solemnly to remind those in power today, and who will be in power tomorrow, of the dictates of a moral law without which neither order nor peace can rule in the universe.

Who does not see, in fact, that in the times in which we are living, when man's folly has made use of the prodigious progress of science and technology for the work of death, and when, as a philosopher has said "our civilization has equipped itself for suicide," the problems confronting the agony of the world are above all moral problems?

"Humanity," says our great Bergson, "groans, half crushed by the weight of the progress it has made.... The increased body awaits the addition of a soul, and the machine requires a mystic faith."

We know what it is, this mystic faith of which Bergson was thinking. It was there at the zenith of the Graeco-Roman civilization, when Cato the Elder, the wisest of the wise, wrote in his treatise on political economy: "One must know the right time to sell one's old oxen and one's old slaves," and introduced these two ideas of the individual person and human brotherhood into the world, which sufficed to convulse it.

The person, that is to say, the spiritualized individual, no longer an isolated human being, a mere cipher in the political order, a cog in the economic gear, but man as a whole, body and soul—soul incarnate, no doubt, but, above all, a soul for the flowering of which society has been fashioned; social man, who finds his full development only in fraternal communion with his neighbor, man whose mission confers a dignity upon him which gives him the right to escape from every attempt at bondage or monopoly.

It is this mystic faith which in the realm of politics has inspired all the written or traditional constitutions of all civilized nations ever since Great Britain, the mother of democracies, guaranteed to every free man, by virtue of Magna Charta and the Act of Habeas Corpus, that he should be "neither arrested nor imprisoned, except by the judgment of his peers delivered by the due process of the law."

It is this faith which inspired the American Declaration of 1776:

> "We hold these truths to be self-evident, that all men have been endowed by their Creator with certain inalienable rights."

It is that which inspired the French Declaration of 1791:

> "The representatives of the French people, constituting a National Assembly, considering that ignorance, forgetfulness, or contempt for the rights of man are the sole causes of common

misfortunes and the corruption of governments, have resolved to set forth in a solemn declaration the natural, inalienable, and sacred rights of man. Consequently, the National Assembly recognizes and declares, in the presence and under the protection of the Supreme Being, the following rights of the man, of the citizen."

Does not the idea of the high dignity of the human individuality also inspire the Constitution of the Union of Soviet Socialist Republics, which, in Chapter X, proclaims "the fundamental rights and duties of citizens of the U.S.S.R.... without distinction as to nationality or race"?

Finally, does not the Charter of the United Nations, signed on 26 June 1945 at San Francisco by 51 nations, begin with this solemn declaration:

"We, the Peoples of the United Nations, are resolved to preserve future generations from the scourge of war, which twice within the span of human life has inflicted indescribable sufferings on humanity, and to proclaim our faith in the fundamental rights of man, in the dignity and value of the human individual, in the equality of rights of men and women, as well as of nations, large and small...."

Certain ones among us have been able to secularize this mystic faith as much as they desired. All of us recognize that it is Christianity's chief contribution to the world and that, extending its conquests slowly in the course of centuries, it has laid the foundations of world-wide civilization.

It was against this mystic faith that Hitler, in the middle of the 20th century, attempted a violent reaction, by opposing to it his barbarous ideology of race distinction, his primitive conception of social life regulated by biological laws alone.

For he not only envisaged establishing the military domination of Germany in Europe, but his ambition was to impose on the world his "culture," which overthrows all the moral and intellectual foundations upon which the civilized world has rested ever since the dawn of the Christian era. For him the biological laws which govern animal communities are equally applicable to human communities, and first of all those of natural selection and the struggle for existence.

So there could be no question of the autonomy of the human individual. Like the ant in the ant-heap, the individual exists only by and for the whole. The State is not made for the individual, but the individual for the State.

So, also, there could be no question of pity, nor of brotherly love. Christianity, the religion of the degenerate and the sick, would be

replaced by the new religion which recognizes no law but that of might, no duty but that of domination.

This animal conception of human life, this "culture," this religion, is not the work of a philosopher propounding a new theory in the field of intellectual speculation, it is the work of a realist who puts it into practice. In the sphere of domestic policy it would order the purging of the German people of the elements which contaminate it, and the improvement of the race of blond Aryans. And so Jews would be driven out or exterminated. The abnormal, the sick, the weak, would be eliminated or at least sterilized. Youth, snatched at an early age from family life, would be trained by the State for its mission, which is "to make the world tremble." "I want," Hitler said to Rauschning, "I want to see in its eyes the gleam which one sees in the eyes of a stag." But by this he slanders the stag, which kills, no doubt, because it is hungry, because it is afraid, or because it is in rut, but which is not versed in the sadism of refined tortures.

This conception of life is applied by Hitler to international relations.

> "A stronger race"—he writes in *Mein Kampf*—"will drive out the weaker ones, for the vital urge in its ultimate form will break down the absurd barriers of the so-called humanity of individuals, to make way for the humanity of Nature, which destroys the weak to give their place to the strong."

And we know what crimes have been committed in the name of this new religion, how many dead the realization of this sham doctrine of life has cost: the concentration camps, the gas chambers, and the crematory ovens; the inoculations with viruses, the sterilizations, the vivisection practised on prisoners and deportees, the enslavement of peoples considered assimilable, and above all the methodical extermination of those alleged to be inferior, and, in short, "genocide"—all this is the monstrous fruit of the Hitlerite ideology.

M. de Menthon was right when he said that the sin against the spirit is the fundamental vice of National Socialism, and the source of all the crimes committed in its name. And did not Louis Veuillot have the gift of prophecy when he wrote in his *Parfums de Rome* in 1871:

> "Germany, Germany, to whom heaven had given so much! When thou shalt see the ghost of an emperor reappear, who will not wield the sword to protect justice and defend the ancient law, but who will call himself the emperor of the people and the sword of the new law, . . . then will be the hour of great expiation."

We have shown who those were who were principally guilty of all the crimes of National Socialism. But to realize their diabolical

plan of universal domination, not only of territories but of men's consciences, they needed collaborators inspired with the same faith, trained in the same school, and that is why the leaders, the "Führer," conceived and brought into being, little by little, this complicated and coherent system of leadership, coercion, and control, which constitutes the whole of the organizations of the State and of the National Socialist Party.

Executive bodies were necessary, from which emanated, by virtue of the "Führerprinzip," general orders and directives; and they were the Reich Cabinet and the Leadership Corps of the Nazi Party.

Instruments were needed for control, for propaganda, for Police and for the execution of orders, and they were the Gestapo, the SA, the SD, and the SS.

Finally, it was necessary for the Army to be at the service of Party policy, and this was the work of the General Staff and the High Command, purged of all elements which were insufficiently nazified.

It is possible that the members of these organizations, these groups or these services were more or less the fanatics of the regime, and the Tribunal will recall the plausible distinction made in the course of Ribbentrop's examination between the "pure Nazis" and those who were so only halfway.

All had at least accepted the doctrine and the material advantages which the regime lavished upon them. Because certain of them made mental reservations are they less contemptible and less guilty?

That all these organizations, these groups or these services contributed to the work of universal domination by every means has been abundantly proved in the course of these proceedings. Have not the defense counsel of the organizations constantly intervened during the interrogations of the individual defendants, and were not all of these defendants, in various capacities, members of one, and often of several, of these organizations, so that the close cooperation between the collective organizations and the men who are now in the dock has been indisputably established?

After these proceedings, which have been so thorough, and after the presentations of my eminent colleagues of the American and British Prosecution, I shall refrain from recalling once more the innumerable atrocities in which the groups or organizations enumerated in the Indictment have participated by ordering them, by committing them, or by permitting them. I should only like to reply briefly to two of the arguments to which the Defense Counsel, and particularly those for the Gestapo, the SD and the High Command, appear to attach the greatest importance.

It is possible, they say at first, that abuses were committed in the heat of the struggle, which had become pitiless in the course of the war which had become total, but it was never a question of anything but individual crimes, which might involve the responsibility of the persons who committed them, but not that of the groups which censured them.

Watertight compartments, says the Defense in the second place, separated the various organizations of the Reich. For this reason the activity of each organization should be examined separately and this examination does not reveal a criminal intention or activity in any of them.

First argument: In order to determine whether or not an organization is criminal, it is necessary, says the Defense, to examine the essential principles of its structure. Now, there is nothing criminal in these. So that the crimes, should any have been committed, can only be attributed to individuals, and do not permit the conclusion to be drawn that the character of the group as a whole is criminal.

Thus the Gestapo, according to the terms of its constitution, was a State Police, charged, like the police of all civilized states, with aiding in the work of justice and protecting the community against individuals who might threaten its security. It is possible that it may sometimes have received and carried out orders from above which were not directly relevant to its essential mission of protection, such as mass arrests of Jews, the extermination of Russian prisoners of war, the murder of recaptured prisoners who had escaped. But such accidental activities did not fall within its competence as an institution. They would not alter the essential character of the organization which had nothing criminal about it.

Thus the SD is constitutionally simply a service for obtaining information and sounding public opinion, a sort of Gallup poll, harmless in itself.

It is possible that members of the SD accidentally collaborated in the repressive measures of the Gestapo. It is true that members of the SD held a number of high positions and indulged in a number of questionable activities, but they were not acting then as functionaries of the SD and could not compromise the organization, the institutional character of which had nothing criminal about it.

Thus the High Command was charged institutionally only with the defense of the Reich, and solely with that defense. It did not deal with politics and had nothing to do with the Police. It is possible that it may sometimes have overstepped its mission. It is true that it signed orders to deport to an unknown destination those who resisted, to hand over to the Police for extermination the commandos and escaped prisoners, which was contrary to military honor, but it acted then merely as an intermediary for Hitler's or

Himmler's orders. This accidental activity outside its own province could not change its essential character, which was not criminal in any way.

Thus the Defense always tries to distinguish between the institutional character of the organization, which it believes it has shown to be non-criminal, and the practical activity of the group which, it admits, is open to criticism, a distinction which is understandable in a democratic regime, where pre-established institutions limit the arbitrary nature of governments, and the autonomy of the individual and the liberty of the citizen are protected from the misuse of power, but which is incomprehensible in the Hitler regime.

Did Best, the police theorist, trouble himself about respecting a principle when he wrote that the methods of the Police are prescribed by the enemy? Does the decree of 28 February 1933 trouble itself about principle, when it allows the all-powerful state to ignore all legal restraints?

Did Hitler make any distinction between principle and practice, when, at the conference of 23 May 1939 held in the Chancellery and attended by the members of the High Command, he stated:

> "The principle of avoiding the solution of problems by adaptation to circumstances must be banished. Rather must circumstances be adapted to necessities.... It is no longer a question of justice or injustice, but of the existence or non-existence of 80 million people."

In reality, under the Hitler regime no pre-established institutions, no legality, no limitation to arbitrariness, no excesses of power were possible. There is no other principle than the "Führerprinzip," no other legality than the good pleasure of the chief, whose orders must be executed without any possible dissension all the way down the scale.

The concept of a so-called institution which was supposed to have presided over the constitution of the collective organizations and given them a certain character, is merely an *a posteriori* construction originating in Defense Counsel's ingenuity.

The concrete activity of the collective organizations is the only thing which counts, and we have proved that it was criminal.

Moreover, the Defense seeks grounds for the exculpation of the collective organizations in the fact that the members of the Gestapo, the SS, or the SD who indulged in these criminal acts did not perform them in the name of their original organization, but were temporarily detached from them.

Has it not been proved, on the contrary, that in the general organization of the National Socialist system these groups played the role of reserves and preparatory schools from which the leaders,

for their work of domination, drew executives who were perfectly prepared for the criminal deeds entrusted to them?

And is not the fact that Hitler often conferred on his accomplices the dignity of honorary membership in one of these organizations also proof of the importance which he attached to the evidence of orthodoxy implied by membership of one or other of these groups?

Thus, whatever point of view one may take, the first argument of the Defense cannot be maintained.

THE PRESIDENT: M. Champetier de Ribes, I think you can hardly finish your speech before the adjournment; I think perhaps we had better adjourn now.

M. CHAMPETIER DE RIBES: Yes, Sir.

[A recess was taken until 1400 hours.]

Afternoon Session

THE PRESIDENT: The Tribunal has had an application from Dr. Stahmer on behalf of the Defendant Göring that certain affidavits offered in evidence by Dr. Laternser on behalf of the General Staff and High Command should be considered on behalf of the Defendant Göring. And the Tribunal, of course, will consider those affidavits on behalf of the Defendant Göring as it would consider all the rest of the record.

Yes, M. Champetier de Ribes.

M. CHAMPETIER DE RIBES: Mr. President and Gentlemen, the Defense submits a second argument.

The organizations, it says, were independent and did not know each other. Some were subject to the State, others to the Party; and State and Party were active in different domains. The various sections within the organizations themselves were watertight compartments and acted quite independently. And at the risk of sacrificing the most compromised cells, Defense Counsel are trying to clear from responsibility the greatest possible number of these supposedly isolated groups.

But this argument is contradicted by all we know of the general organization of the Reich's administrative services. In establishing the personal responsibility of each individual defendant, M. Dubost showed that the close interlocking of the organizations and the services is beyond discussion.

The National Socialist State is totalitarian. Its officials, as well as its services, derive their inspiration from a common ideology and pursue common aims. Unity of action is ensured by the penetration of the Party, the expression of the political will of the people, throughout the whole State machine.

This unification of State and Party was effected by the law of 1 December 1933: "The National Socialist Party has become the representative of the conception of the German State and is indissolubly bound to the State." (Article 1.) Public services must cooperate with the Party services. In fact, this interpenetration and unification of State and Party was effected by the concentration into the same hands of the powers emanating from both. Hitler was simultaneously head of the State, the Army, and the Party. Himmler, as Chief of the SS, which is subject to the Party, was simultaneously head of the Police, which was subject to the State. The Gauleiter, Party functionaries, in most cases also represented the State in their capacity of Reich Governors or Chief Administrators of Prussia. The Chief of the Party Chancellery had a part in the elaboration of important laws and in appointing higher State

officials. The law of 7 April 1933 provides for the purging of State officials suspected of insufficient devotion to the Party, and we know with what brutality this purging was carried out in the High Command.

Thus, in their acts as in their writings, the interdependence of State, Party, and Army is realized to the fullest extent, and in the sum total of their activity it is impossible to distinguish what share of responsibility belongs to the one or to the other.

Is it necessary to give examples of this? We have already furnished many and fear to weary the Tribunal.

It will suffice to recall the close co-operation between the Gestapo, the SD, the SS, and the Army in the common elaboration of general instructions and in the execution of operations against resistance forces, reprisals against civil population, and the extermination of the Jews.

Do we not find convincing proof of it in Hitler's instruction of 30 July 1944, which has frequently been quoted:

> "All acts of violence committed by non-German civilians in the occupied territories against the Wehrmacht, the SS and the Police, and against the installations which they use, must, as acts of terror or sabotage, be fought in the following way:
>
> "a) The troops and each individual member of the Wehrmacht, SS, and Police must kill on the spot terrorists and saboteurs caught in the act.
>
> "b) Anyone caught afterwards must be transferred to the nearest local station of the Security Police and the Security Service . . ." (F-673).

By mentioning the Wehrmacht, the SS, and the Police three times, side by side, does not Hitler stress the close co-operation existing between these organizations?

Is it necessary to recall once more Keitel's numerous instructions, Marshal Kesselring's order of 14 January 1944, and General Von Brodowski's diary of operations, which place the Army at the disposal of the Police, or the Police at the disposal of the Army, for the savage repression of the resistance forces? Is it necessary to recall Keitel's orders to the commanding generals in France, Holland, and Belgium that the Army should participate in the pillage of art treasures organized and directed by Rosenberg?

Did not the witness Hoffmann—quoted by the Gestapo—declare to the Court on 1 August that the "Nacht und Nebel" decree was the work of collaboration between the High Command and the Ministry of Justice?

The Defense therefore tries in vain to lessen these responsibilities by dividing them between the State and the Party agencies, between the so-called independent organizations.

It is no more successful when it tries to establish the existence of watertight compartments separating within the same organization the various sections composing it. For example, whom does it expect to believe that the administrative officials of the SD (Security Service) and of the Gestapo were unaware of the vast scale of the deportations, when they had to solve the difficult problem of arranging the convoys; or that the maintenance offices could fail to know of the exterminations carried out by chemical means, when they had to repair the gas vans?

In fact, all the departments of the Gestapo, the SD, the SS, and the High Command are jointly responsible for the crimes committed in common; and what is true of these organizations is true also of the Reich Cabinet and the Political Leaders, as has been shown by my honorable colleagues of the Prosecution.

Are organizers less guilty than those who committed the deeds; is the brain less responsible than the arm? We therefore consider we have proved the joint culpability of all those organizations which we request you to declare as criminal.

Does that mean that our purpose is to obtain from the competent tribunals the most severe sentences against all members of these organizations? Certainly not. In requesting of your justice the moral condemnation of the organizations, without which the crimes of National Socialism could not have been perpetrated, we are not asking you to condemn without hearing men who can indeed plead their cases in person before the competent tribunals

Moreover, although the Charter of your Tribunal decrees that "in cases where a group or organization is declared criminal by the Tribunal, ... such criminal nature is considered proved and shall not be questioned," it does not say anywhere that all members of such groups or organizations must be arraigned before competent authorities, and in our opinion only those should be prosecuted who, having knowledge of the criminal activity of the group or organization, deliberately joined it, thus participating personally in the crimes committed by all collectively.

We think, on the other hand, that in the interest of serene justice and in the hope of universal pacification, the penalties must be made proportionate to the gravity of the offences charged, and that if the most severe penalties are justly attendant upon the crimes of which a member of an organization is found personally guilty, mere affiliation, even voluntary, to one of these groups should only be punished by penalties involving loss of freedom or even only by loss of all or some civil or political rights.

And if the Tribunal share this opinion, nothing in the Charter prohibits them from saying so in whatever form they deem most fitting. Your verdict therefore will not be, as Dr. Steinbauer seemed to fear in his final pleading for Seyss-Inquart, the conclusion of a "trial of the vanquished by the victor." It will be the solemn and serene manifestation of eternal justice.

In this same final pleading, trying to contrast the words of M. de Menthon with the attitude of one of the most heroic chiefs of the French Resistance, who has since become President of the Government of the Republic, Dr. Steinbauer recalled M. Georges Bidault's words while visiting severely wounded Germans after the liberation. "Comrades," he said to them, "I wish you a speedy recovery and a happy return to your country."

Seyss-Inquart's counsel was wrong. There is no contradiction between the words of François de Menthon and those of Georges Bidault; and the French people, just as, I am sure, the free citizens of the United Nations, can all reconcile the severity necessary for the culprits with pity for those who perhaps were only the victims.

In declaring the collective organizations criminal in order to enable the competent authorities to punish the guilty, but only the guilty, in solemnly reminding the world that before the arbitrary rule of men and governments a moral law existed, incumbent on public figures as well as on private persons, on nations as well as on individuals, a law which cannot be broken with impunity, your sentence will contribute greatly to the great work of universal peace which is being undertaken in the organization of the United Nations as well as at the Peace Conference, in New York as in Paris, by the representatives of the free peoples, "anxiously awaited by sincere men of upright heart."

GENERAL R. A. RUDENKO (Chief Prosecutor for the U.S.S.R.): Your Lordship! Your Honors!

We have now come to the final stage of the Trial which has been conducted with exceptional care and with the greatest skill. The Prosecution has presented exhaustive proofs for the individual cases of the major war criminals now in the dock. We fully support also the charges against the criminal organizations—the Government of Fascist Germany, the General Staff and High Command of the German Armed Forces, the Leadership Corps of the German National Socialist Party, the State Secret Police (Gestapo), the Security Detachments of the German National Socialist Party (SS), Security Service (SD), and Detachments of SA.

As it has been established by the legal proceedings, Hitlerized Germany was headed by a gang of conspirators who seized the power of the State and the administration of the whole country. A group of conspirators of this kind, operating in a state with a

population of many millions, at the centre of a huge State machinery, could not exist without a whole system of subsidiary criminal organizations connecting the conspirators with the remote districts, the leaders of the main thoroughfares with the leaders of the streets and byways. Therefore in Hitler's Germany there was a network of organizations possessed of great power: the Leadership Corps of the NSDAP, Gestapo, SS, SD, *et cetera,* which functioned under the constant and direct leadership of the conspirators. The law of 1933, according to which the machinery of the Fascist Party was merged into the State machinery of Hitler's Germany, was an open legal recognition of the fact.

To strengthen the union between the governing body and the organizations, each of the conspirators acted in several capacities and held several offices, representing many persons: Göring, for example—Reich Minister, Commander of the Air Force, Delegate for the Four Year Plan, Reichsleiter, Supreme Commander of SA and SS; Hess—Cabinet Minister, Hitler's Deputy for the Party, General of SS and SA; Rosenberg—Reichsleiter of the National Socialist Party for questions of ideology and foreign policy, as well as Cabinet Minister and Obergruppenführer of SA and SS, *et cetera.* Just as Göring the Minister is inseparable from Göring the Obergruppenführer of SS, so are the Gestapo and the other criminal organizations inseparable from the State in Hitler's Germany. It is possible to imagine Hitler's Germany without libraries, without schools, even without hospitals, but Hitler's Germany without SS and Gestapo could not exist.

Reflecting this political reality, the Charter of the International Military Tribunal provides for two kinds of participation in the criminal associations of Hitler: Article 6 of the Charter refers to participation in the criminal conspiracy, and Articles 9 and 10 refer to the participation in the criminal organizations. Both of these conceptions are organically and indissolubly connected, for they express in legal terms the correlation and the connection which actually existed in real life between the conspiracy and the organizations in Hitler's Germany.

After having closely connected these two kinds of participation of the Hitlerites in international crimes, that is, participation in the conspiracy and participation in the organizations, the Charter of the International Military Tribunal has established with full reason different criminal and legal consequences for two kinds of participation.

Participation in the conspiracy can by its very nature only refer to a limited number of persons, and is provided for by the Charter as an independent criminal action. The question of responsibility for participation in the criminal organizations, comprising hundreds

of thousands of members, on the other hand, is differently defined by the Charter. Based entirely upon the principles of law and justice, the Charter of the Tribunal leaves it to the competence of the national tribunals to determine the individual responsibility of the members of the organization, which is closely connected with the determination of the guilt and of the criminality of a great number of individual persons.

According to Article 10 of the Charter, "if the Tribunal considers one or another organization as criminal, the national courts have a right to prosecute separate individuals for belonging to criminal organizations." Therefore the Tribunal has the right to consider an organization as criminal, not for the purpose of punishing this organization as a whole or all of its members, but thus to enable the national courts to prosecute individuals for belonging to such organizations as have been declared criminal.

In accordance with the instructions of Article 10 of the Charter the tribunals of the U.S.S.R., the U.S.A., Great Britain, and France, and of 18 states which joined the London Agreement, may certainly condemn, but they have the right also to come to a conclusion that the defendant was not a member of the organization at all, or belonged to it only formally and was in fact far removed from it, and according to such a conclusion they may acquit him. All these questions, as well as related questions, were and remain within the competence of the national courts. These courts are limited only in one theoretically important respect, which is in principle of profound importance: if the International Tribunal considers the organization as criminal, the national tribunals cannot deny or even discuss the criminal character of such an organization; here for the first time in legal history the sovereignty of individual countries is limited by the enforcing power of the verdict of the international legal authority—the Tribunal.

This definition of the competence of the International Tribunal and the national courts is very essential in order to understand the regulations of the Charter of the Tribunal concerning criminal organizations. And, indeed, just because the Tribunal will have to decide only the general question concerning the criminality of the organization, and not separate questions about the individual responsibility of these various organizations, the Charter does not indicate any particular criterion of the concept "organization," and in this case does not bind the Tribunal by any formal requirement. The absence in the Charter of a detailed definition of a criminal organization is not, therefore, an omission in the Charter but a theoretical position on principle, which follows from the above-mentioned fact, namely, relegating the elucidation of the question of facts to the agencies of national justice. Therefore, attempts to

require some kind of factual signs (voluntary membership, mutual information) in order to consider the organization as criminal do not find any support in the Charter but differ from its entire structure. The main and only task presenting itself to the Tribunal is not such investigations with which national courts deal and will have to deal, but the establishing of one decisive fact, namely, whether by its criminal actions the organization participated in the realization of the plan of Hitler's conspirators. Complying with this task the Charter established the order of the proceedings for the prosecution of organizations.

In fact, the Charter of the Tribunal provides that for the decision on the question concerning the criminal organizations it is necessary to consider the case of the definite representative of such an organization sitting in the defendants' dock. The defendants at this Trial were at the same time participants of the conspiracy and leading members of the organizations, the criminal character of which the Tribunal has to decide. Consequently the evidence submitted that has been used for the individual cases of the defendants is at the same time the essential evidence for the organizations which they represent. The documents submitted by the Prosecution have quite clearly proved that the organizations mentioned in the Indictment served as a constant and direct instrument for realizing the criminal plans of the conspirators. Thus the criminal character of these organizations has been fully and comprehensively proved through the present proceedings. The Tribunal has endeavored to secure the most comprehensive investigation of the case of the organizations. By means of broadcasts, through the Press, and by special announcements, the members of the accused organizations have been invited to submit their explanations to the Tribunal. The Tribunal is aware of the number of persons now in internment camps who wish to avail themselves of this possibility. The formation of an auxiliary commission has made it possible for the Tribunal to interrogate the greatest possible number of members of the organizations who will later be examined and dealt with by competent national courts. Thus, as a result of complicated preliminary work, a group of witnesses selected by the Defense appeared before the Tribunal. Not being able to deny the irrefutable force of the documentary evidence submitted by the Prosecution, the Defense decided to summon its own witnesses in opposition.

Your Honors, we remember these witnesses and their testimonies. If more evidence is required to prove that falsehood is a constant and invariable companion of crime among the Hitlerites, the false testimonies of Kaufmann, Sievers, Von Manstein, Reinecke, Best, and others can serve as convincing illustrations. These "witnesses," in their effort to whitewash the criminal organizations, of

which they were the leading members, reached the heights of absurdity. The SS and the Gestapo are found to be a society of the elect, a club of noble men, an Order of Knights. It is not without reason that the Defense included Rosenberg among the Knights. All of them sparkle with moral purity and all of them are filled with pity towards their neighbors. The Obergruppenführer of the professional tormentors of the SS hastened to save Jews from the pogroms, while General Von Brauchitsch was a zealous pacifist. It is instructive to find that without any exception, all the organizations, which are considered as criminal by the Indictment, are pure and immaculate according to the testimonies of the witnesses. But who then murdered the 12 million peaceful citizens? Who tortured the prisoners of war and deported millions of people for slave labor in Germany from the occupied territories? No defendants are to be found! Lies—cynical, blasphemous lies, from the lips of men whose conscience did not hesitate before murder, whose honor did not prevent them from committing perjury—do not deserve to be refuted.

While examining the case concerning the criminal organizations, the Prosecution submitted striking supplementary documents testifying to new atrocities of the Hitlerite criminal organizations. Facts, irrefutable facts have been established. The inflexible will of the law is clear. The time has come to draw conclusions.

At the congress of the Nazi Party in 1934 Hitler declared:

> "It is not the State that has created us, but we who have created the State: it is possible that we are considered by some as a party, by others as an organization, by yet others as something else; but in reality we are what we are."

The present Trial gives a comprehensive and exact answer to the question of who the Hitlerites were. The Führer at the head of a criminal gang of conspirators, appearing in different roles and having various titles (Ministers, Gauleiter, Obergruppenführer, and so forth), surrounded by a network of criminal organizations created by him, who had seized in their grip millions of German citizens—this was the outline of the political structure of Hitler's Germany.

The recognition of the criminal character of the organizations mentioned in the Indictment, as well as the recognition of the existence of the conspiracy, are therefore the necessary conditions for the triumph of justice, the triumph longed for by all freedom-loving nations.

With regard to the separate organizations which the Prosecution deemed indispensable to designate as criminal, I find it necessary to

mention the following, in addition to the convincing arguments expressed by my honorable colleagues:

In Count One, Paragraph IV, Article "A" of the Indictment, entitled "The Nazi Party as the Central Core of the Common Plan or Conspiracy," it says:

> "In 1921 Adolf Hitler became the supreme leader or Führer of the Nationalsozialistische Deutsche Arbeiterpartei (National Socialist German Workers Party), known as the Nazi Party, which had been founded in Germany in 1920. He continued as such throughout the period covered by this Indictment. The Nazi Party, together with certain of its subsidiary organizations, became the instrument of cohesion among the defendants and their co-conspirators and an instrument for the carrying-out of the aims and purposes of their conspiracy."

The legal investigation has fully confirmed this conclusion.

The numerous crimes of Hitler's clique were inspired and directed by the Nazi Party—the motive power of the Fascist conspiracy.

Many of the defendants and the so-called witnesses for the Defense said that they were National Socialists who wanted to protect Germany against attack from other countries. This is an evident falsehood. Only impostors could assert that Austria, Czechoslovakia, Poland, Norway, Denmark, Belgium, Holland, Yugoslavia, the Soviet Union, and other freedom-loving countries wanted to strike a blow against the integrity and independence of Germany. In reality the German Fascists are not nationalists but imperialists, whose main and decisive aim was the seizure of foreign land so as to further the expansion of militant German capitalism. They shamelessly called themselves Socialists. Only insolent demagogues can assert that the German Fascists—who eliminated all democratic freedom from the people, replacing it by concentration camps, who introduced slave labor at works and factories and restored serfdom in the villages of Germany and in the countries occupied by them—are the defenders of the interests of the workers and peasants. And if these imperialists and reactionaries disguised themselves in the garb of "nationalists" and "socialists," they did it exclusively to deceive the nation. The program of the Nazi Party itself contained the principles of the plan for domination, involving the seizure of foreign territories and establishing the principles of human hatred. In one of the annuals of the NSDAP, published under the direction of Ley, it was said:

> "The Program... is the political foundation of the NSDAP and, consequently, the fundamental political law of the State. All legal principles should be applied in the spirit of the Party Program. After seizing power the Führer has managed

to realize the fundamental parts of the Party Program, beginning with the basic principles up to the details."

Hitler's Party is inseparable from Hitler's Government, from the SS, Gestapo, and other criminal organizations of Hitler's regime, as the Nazi leaders in the dock are inseparable from the tormentors of Auschwitz and Maidanek, Babye-Yar and Treblinka.

"What I have achieved,"—said Hitler—"is known to the Party, thanks to which I became great, and which was in turn glorified by me."

Indeed, soon after the Hitlerites seized power the decree of 14 July 1933 forbade the creation of any other political parties besides the Nazi Party. The NSDAP became the only political party in Germany. A little later, on 1 December 1944, the law was issued "Concerning the Unity of the Party and State," in which it was mentioned:

"After the victory of the National Socialist revolution, the NSDAP is the standard-bearer of German statesmanship and is inseparably connected with the State.

"To ensure close collaboration of the Party organizations with the offices of the State, the Deputy of the Führer is appointed member of the Government of the Reich."

Paragraph 3 of this law proclaimed the members of the NSDAP and the SA (including the organizations subordinated to them) as "the leaders and motive power of the National Socialist Government."

The law of 1 December 1933 was the fundamental measure which provided the leaders of the criminal Nazi Party with full political power in Germany, as this law established the Nazi Party as the embodiment of the State.

In order to attract the masses of the population to the Fascist regime, the Hitlerites introduced the most shameless social bribery, besides exploiting the national feelings and the unheard-of social demagogy. Major organizations were created: the Hitler Youth, Labor Front, the SA, the SS, *et cetera*. The numerous members of these organizations were bound to the Fascist regime not only through various privileges and material advantages, but also by mutual responsibility for committing common crimes. The overwhelming terror machine, with its ramified network of detection, provocation, perfidy, concentration camps, summary justice, operated against all who were discontented with the regime.

The system of combining the leading posts of the Nazi Party with the leading posts of the terroristic organizations—SS, SD, Gestapo—and of the Government helped in promoting the realization of the plans of the Fascist conspirators and rendered easier

the realization of the plans for the subordination and control of the German nation and the German State.

The Reichsführer SS Himmler was simultaneously Reichsleiter of the NSDAP. The Minister of Foreign Affairs, Ribbentrop, was a general of the SS, and the Deputy of the Führer, Hess, was simultaneously a Reichsminister. The President of the Secret Cabinet Council, Neurath, was a general of the SS, and one of the leaders of the Gestapo, Best, was Kreisleiter of the Nazi Party, and so on.

After having secured, with the assistance of the Party, full control over Germany, Hitler's conspirators went on with the realization of their aggressive plans. In his speech before the Reichstag on 20 February 1938, Hitler said:

> "The greatest guarantee of the National Socialist revolution consists in complete external as well as internal domination by the National Socialist Party over all offices and organizations of Germany.... All offices are under control of the supreme political leadership."

I have already mentioned in my final statement that the Party changed, under the leadership of Bormann, into a police organization, which was in close co-operation with the Gestapo and the SS; that the entire Party machinery was drawn upon for the realization of the aggressive plans of the leaders of Hitlerite Germany; that the Party machinery took an active part in the measures of the German military and civil authorities for the inhuman exploitation of prisoners of war, and participated in the deportation into slavery of the population of the territories occupied by the Germans.

When we speak here at the Trial about Goebbels' lies, Himmler's terror, and Ribbentrop's perfidy, this refers also to the Nazi Party. When the Prosecution submitted proofs of the criminal activity of Göring and Hess, Rosenberg and Streicher, Von Schirach and Frank, Speer and Sauckel, these were simultaneous proofs of charges against the Party, at the head of which were the defendants. These proofs were quite sufficient to consider the entire Nazi Party as a criminal organization, as understood in Article 9 of the Charter of the International Military Tribunal. However, the Prosecution does not raise the question of the responsibility of the rank-and-file members of the Party, many of whom became the victims of their faith.

In full conformity with the Indictment, we raise the question of declaring it as a criminal organization only as far as it concerns the Leadership Corps of the Nazi Party, which was the brain, the backbone, and the driving power of the Party, without which the

Hitlerite conspirators would not have been able to carry out their criminal plans.

The Leadership Corps was a specially selected group, within the Nazi Party itself, and as such was endowed with extraordinary prerogatives. Political Leaders were organized according to the "Führerprinzip," which was applied not only to Hitler, but to the entire Leadership Corps. "The basis of the Party organization is the principle of the Führer idea"—is written in the statute of the Nazi Party. Each Political Leader was sworn in. According to the Party statute the wording of the oath was as follows: "I pledge eternal allegiance to Adolf Hitler; I pledge unconditional obedience to him and to the leaders appointed by him."

All Political Leaders were appointed by special selection. The only difference was that some of them, such as Reichsleiter, Gauleiter, and Kreisleiter, were appointed by Hitler himself, whereas the others, heads of departments and division chiefs in Gau and Kreis, as well as Ortsgruppenleiter, were appointed by the Gauleiter. Such Political Leaders as Block- and Zellenleiter were appointed by the Kreisleiter.

Many of these Reichsleiter and Gauleiter have appeared here before Your Honors. In the defendants' dock are Reichsleiter Rosenberg, Schirach, Frick; together with the missing Reichsleiter Bormann, Himmler, Ley, and Goebbels they represented the leading group of the Nazi Party, and they were leaders of the Fascist conspiracy as well.

Here is the Gauleiter of Franconia, Streicher, and the slave trader Sauckel, the Gauleiter of Thuringia. You have heard of Erich Koch's devilish activity in Ukraine. Erich Koch was a Gauleiter too. The Gauleiter of Lower Styria, Uiberreither, carried out the mass shooting and executions in Yugoslavia. I will quote some short extracts concerning his activity:

> "20 June 1942. Within the period covered by this report, 105 people were shot in the district of Celje, and 362 arrested.... The chief of the Security Police will empty the prison in two weeks' time. Part of the imprisoned people will be transferred to other prisons and the others shot. Thus we shall prepare enough room for the next large-scale action.
>
> "30 June 1942. Sixty-seven persons were shot in Celje. Among them six women...."

Gauleiter Wagner terrorized people in Alsace, Gauleiter Terboven in Norway. Gauleiter Bohle, Leader of the Auslands-Organisation, set up and directed a widely ramified terroristic network for espionage and diversionist activities abroad and created the so-called "Fifth Columns" in different countries.

According to the decree of 1 September 1939, 16 Gauleiter were appointed Reich Defense Commissioners. Later, in connection with the mobilization of the military resources, the Gauleiter carried out even more important tasks.

Each district was proclaimed a Reich Defense Area, and the Gauleiter became commissioners of these areas. According to the Cabinet Council decree of 16 November 1942, it was laid down that in wartime the Gauleiter were entrusted with extraordinary tasks. During the war, the Gauleiter were in charge of billeting; they were entrusted with important military duties, and all branches of German war economy were co-ordinated by them. And at the end of the war the Gauleiter were the commanders of the Volkssturm in their respective areas.

We should remember that when in March 1945 Speer was appointed Hitler's plenipotentiary for the total destruction of industrial objectives, bridges, railways, and other means of communications, he sent his telegraph-order to the Gauleiter, for they were personally supervising the carrying-out of the destruction of important objectives on the spot.

And now, after all this, the Defense is trying to present Hitler's party as a kind of welfare society, and its leaders as lady patronesses; it is trying to confuse a very clear case by a heap of written documentary evidence collected in various prisons and camps where the arrested Fascists are being held.

Counsel Servatius understands that the probative value of this mass of written evidence is highly dubious, and he resorts to the last argument, saying that "the Defense was unable to visit the camps in Austria, no applications having been received from the Soviet Zone." But was the testimony of the witnesses for the Defense more convincing in consequence? Does the fact that Servatius did not visit Austria change the situation in the very least? Servatius was given unlimited opportunities of visiting the camps in the Soviet Zone of occupation. He visited certain camps. He knew that the right of the members of the organizations to submit declarations and to make statements before the Tribunal had been repeatedly announced in the newspapers published in the Soviet Zone and broadcast by radio. Servatius knew all this, but nevertheless he still endeavored to deceive the Tribunal. He attempted to do this in other cases as well.

When Servatius refers to Hess's directive of 27 July 1935 in order to confirm the fact that the Corps of Political Leaders never existed, and that allegedly the title of "Political Leader" was not an official one, he passes over in silence that it was indicated, in this very same directive, that "naturally the term 'Political Leaders' remains in use."

Servatius artificially increases the number of the leading staff of the NSDAP to 2,100,000 persons, in order demagogically to impute to the Prosecution a tendency to punish millions of Germans. At the same time, and in order to shelter outstanding Fascist leaders from all legal responsibility, without any proof whatsoever he affirms that, out of the workers of the Gauleiter organizations, 140,000 were only "honorary workers." The infamous Fascist Kaufmann, summoned by the Defense to the witness-stand, having been a member of the Nazi Party since 1921, and a Gauleiter for 20 years, did not know anything about the crimes of the Hitlerite conspirators. He was a "socialist," and was only entrusted with the welfare of the population.

Another Defense witness, Hans Wegscheider, having been an Ortsgruppenleiter for a period of 12 years, went even further in his testimony. He declared that during these 12 years he did not get enough time to read even *Mein Kampf.*

A third witness, Meyer-Wendeborn, a Kreisleiter since 1934, even surpassed Kaufmann in trying to help his accomplices. Where the latter gave an affirmative answer to the question: "Were Block- and Zellenleiter a kind of Political Leader?" Meyer-Wendeborn answered the question in the negative.

It would be very easy, by citing further examples, to prove the inconsistency of the Defense standpoint, but I consider it useless to enter into a discussion with the Defense summoning such witnesses as Kaufmann, Wendeborn, and such like.

Among the Political Leaders of Hitlerite Germany (this title was legalized by Hess's decree of 27 July 1935, as shown in Defense Document Number 12) there was within the Party hierarchy a separate group of so-called "Hoheitsträger," which occupied a special position. Together with the Gauleiter and Kreisleiter, the group of Hoheitsträger also included the Ortsgruppenleiter, Zellenleiter, and Blockleiter.

The special character of Political Leaders called "Hoheitsträger" is described in the *Organization Book of the NSDAP* and in the periodical called *Der Hoheitsträger,* which was strictly confidential to everybody except to a certain group of the Leadership Corps of the Party, the SS, and the SA.

From the contents of this periodical it is quite evident that the Leadership Corps of the Nazi Party paid constant attention to the measures and doctrines which were applied as the Fascist conspiracy was being realized. In 1937-38 the following problems were treated in the periodical mentioned.

The slanderous anti-Semitic articles, among them some by the well-known Ley, the attacks on the Church, the reasons for the necessity of increasing the Lebensraum and seizing colonies; the

motorization of the Armed Forces; the utilization of the Nazi Party cells and blocks to gain votes favorable to the Hitlerites in the elections; the cult of leadership, race theory, *et cetera*—these problems were treated in each copy of the periodical. And even after this evidence the Defense is trying to assert that the Leadership Corps of the Nazi Party was not acquainted with the plans of the Hitlerite conspirators.

The Nazis are trying now to disavow the compromising relations they had with Gestapo and SD, but these relations are indisputable.

As early as 26 June 1935, Bormann had issued an order which reads:

> "In order to bring about a closer contact between the Party offices and its organizations with the chiefs of the Gestapo, the Deputy of the Führer requests that the chiefs of the Gestapo be invited to attend all of the larger official Party rallies and its organizations."

In another regulation issued on 14 February 1935, and also signed by Bormann, it was stated:

> "Because the work of the Party is primarily benefited by the work of the SD, it is inadmissible that its expansion be upset by prejudiced attacks when individuals fail. On the contrary, it must be assisted wholeheartedly."

The Tribunal has at its disposal numerous proofs of the gravest crimes in which the entire Leadership Corps of the Nazi Party participated, from Reichsleiter to Blockleiter included. I will mention here only a few of them.

While carrying out the plans of the Hitlerite conspirators for the enslavement of the Yugoslav people, the Kreisleiter of the Pettau district, assisted by Ortsgruppenleiter and Blockleiter, destroyed all inscriptions, posters, and announcements written in the Slovene language. This Fascist ruler went even so far as to order the Ortsgruppenleiter "to see that all Slovene inscriptions on the saints' images (icons), chapels, and churches should immediately be entirely removed."

In his letter of 13 September 1944, addressed to all Reichsleiter, Gauleiter, and Kreisleiter, Bormann informed them of the agreement concluded with the OKW to the effect that the "co-operation of the Party in the commitment of prisoners of war is indispensable." Therefore the officers assigned to the prisoner-of-war organization were instructed to co-operate most closely with the Hoheitsträger. The commandants of the prisoner-of-war camps had to detail immediately liaison officers to the Kreisleiter.

What the results of this co-operation were and the way in which the prisoners of war were exploited in Germany is well known.

In Göring's decree of 27 March 1942, issued in connection with the appointment of Sauckel as Plenipotentiary General for the Allocation of Labor, it was stated that Sauckel was authorized to issue orders "... to the Party organs, to the Party agencies, and to the organizations attached to them."

And Sauckel took advantage of this authorization. As he wrote in his "program issued for the Führer's birthday," he, "with the Führer's and the Reich Marshal's consent, as well as with the consent of the Head of the Party Chancellery," appointed all Gauleiter of the German Reich his plenipotentiaries. Sauckel's decree defined the Gauleiter's tasks as follows:

> "To secure the uninterrupted collaboration of all State, Party, military, and economic authorities in order to attain the greatest effect in the field of the employment of labor."

On 25 September 1944, Himmler issued a top-secret directive concerning "the safeguarding of the discipline and efficiency of foreign workers." In this directive Himmler warned that:

> "The managers and shop stewards in all industries must pay close attention to the frame of mind of the foreign workers. For this purpose close co-operation of the Party, State, and economic authorities with the Gestapo is of the greatest importance...."

Further on in this directive, it was stated that all members of the NSDAP working in industries, subject to instructions given them by the Kreisleiter through the Ortsgruppenleiter, are obliged "to watch the foreign workers most carefully and notify the shop stewards immediately about the remarks made in order that they may be communicated to the 'Abwehr' officials." Where there was no permanent Abwehr official the information was to be delivered to the Ortsgruppenleiter. Himmler's directive prescribed that "in the interests of unified political leadership the Abwehr officials should co-ordinate their work with the Gestapo leaders, who, in case of need, will be summoned by the Kreisleiter."

That is exactly what was meant by "political leadership" of Kreisleiter and Ortsgruppenleiter. Similar espionage functions were carried out by the Blockleiter, too, and this was clearly indicated in the *Organization Book of the NSDAP.*

> "A Blockleiter should expose all persons spreading pernicious rumors and report them to the Ortsgruppenleiter, in order to enable the latter to report them to the State authorities through official channels."

A Blockleiter had the task "of propagating the National Socialist ideology amongst members of the Party and the people entrusted to him." He recruited members for the Hitler Youth, SA, and SS organizations, and for the DAF (German Labor Front), that is, he

secured attendance at the Party rallies, participation in demonstrations, *et cetera.*

"A Blockleiter has to carry out a constant National Socialist propaganda."

What kind of Nazi propaganda it was we all know very well.

"We want to re-arm again. . . ."—wrote Hitler—"Therefore, all available means—starting from the child's A B C up to the latest newspaper, every theater and cinema, every signpost and signboard, are to be put at the service of this great mission."

Not every German knew these words of Hitler, but everyone knew the Blockleiter of his block, and this man was continuously spreading the Fascist virus poisoning the people's minds, thus assisting in the realization of the general plans of the Hitlerite conspirators.

The Blockleiter appeared as small Führer, but even they were endowed with very positive powers over the population living in the areas entrusted to them. Certainly the Blockleiter did not work out the plans for aggressive wars, but they did contribute very much to the realization of these plans. They formed, too, a very important part of the Nazi Party, which was the center of the Fascist conspiracy. That is why we insist on proclaiming the group of the Political Leaders of the Nazi Party as a criminal organization, together with all big and little Führer, Reichsleiter, Gauleiter, Kreisleiter, Ortsgruppenleiter, Zellenleiter, and Blockleiter—that is to say, the whole Leadership Corps of the monstrous machinery of Fascist dictatorship.

Among other criminal organizations created by German Fascism, special attention should be paid to the so-called "Schutzstaffel" of the Hitlerite party, abbreviated to "SS." The gravest crimes of German Fascism are associated with the title of "SS"—mass murder carried out in concentration camps, merciless butchery of the civilian population and of prisoners of war, fanatical large-scale massacres. Generally speaking, the "SS" men were supposed to carry out the genocide plans of Hitler and his clique. The Reichsführer "SS" Himmler often called the "SS" the "Black Corps." *Das Schwarze Korps* was also the title of the official SS newspaper, the organ "of the Reichsführer of the SS."

It was not a name picked up at random. The whole system applied by the "SS," starting from the so-called "Allgemeine SS," that is, the "General SS," and up to the camp guards and the Waffen-SS, was actually built up as a special corps of criminals convinced of their own impunity, and purposely trained and taught in the spirit of the most cruel and inhuman Hitlerite "theories."

The chief Fascist conspirators needed the mass cadres for carrying out the murder of millions of enslaved people, for the seizure of territories, and the realization of the so-called program of "Germanization." All these tasks were carried out by the SS men.

The "SS" organization was created and became famous as Hitler's Praetorian Guard, an organization of pogrom-makers and murderers. During the whole period of its existence, it remained the same.

Among other evidence presented by the Soviet Prosecution, there was a copy of *Das Schwarze Korps* of 20 August 1942, in which the leading article was entitled "Should We Germanize?" The contents of this article, which represent the Nazi ideas of Himmler, are of such importance if one seeks a correct illustration of the character of the SS, that I am going to quote a small extract:

> "... The following slogan has been given out by the Reichsführer SS: It is our task to germanize the East not in the old sense, that is, to teach the people living there the German language and German laws, but to see to it that only German people, that is people with Germanic blood, should live in the East!"

This article was published for the information of the SS men at a time when criminal German Fascism was still sure of its victory and had already started to carry out the extermination of millions of people.

At a conference of Gruppenführer held in Poznan on 4 October 1943, Himmler, the creator of the SS, in a speech concerning the extermination of the European Jews, stated—I refrain from giving the quotation of this speech because it was quoted by Sir David yesterday.

I do not want to dwell upon the history of the SS. One may add only to what has already been said that the "Schutzstaffel," created early in 1925, became, according to Hitler's special decree of 20 July 1934, an independent organization of the Hitlerite party, just after the political murders committed by the SS men on 30 June 1934.

Hitler's decree states as follows:

> "In consideration of the great meritorious service of the SS, especially in connection with the events of 30 June 1934, I raise it to the status of an independent organization within the NSDAP."

The process of development of the SS in the Hitler State points clearly to the steadily increasing consolidation of the SS, the so-called General SS as well as the Waffen-SS, and the police organization of the Gestapo, SD, Einsatzgruppen, and Sonderkommandos

who carried out the large-scale "actions," that is, massacres and "filtrations" in the camps, *et cetera.*

This process of development was confirmed on 17 August 1938 by a secret decree of Hitler, in which, explaining the reasons compelling him to unite on 17 June 1936 the offices of the Chief of the German Police and the Reichsführer SS, he stated:

> "By appointing the Reichsführer SS Chief of the German Police at the Ministry of the Interior on 17 June 1936, I have created a foundation for the consolidation and reorganization of the German Police."

In accordance with this measure, the "Schutzstaffel" of the Nazi Party, directed by the Reichsführer SS and Chief of the German Police, entered into close collaboration with the German Police. And only in this close collaboration with the most ruthless members of the Police, created by German Fascism and especially appointed to carry out tortures and extermination, could the exact task of the SS be understood.

The Defense unsuccessfully tried to refute this evidence. It has tried to present to the Tribunal this organization as being composed of a number of absolutely independent cells, separated by means of innumerable partitions, such as Allgemeine SS, Waffen-SS, SS Emergency Troops, or the "Totenkopf" Division.

It appears that outside of a small section of "Totenkopf" not one of the units or sections of the SS had any connection with the Police and the concentration camps, any more than with the police activities conducted by Hitler, Himmler, Heydrich, and Kaltenbrunner, or for that matter with the other grave crimes committed by the Hitlerites. As a result, in the opinion of the Defense, the only participants in the crimes perpetrated by these executioners were the Gestapo members Müller and Eichmann, and the Chief of the "D" administration of the SS, Pohl. To wit, these particular persons murdered and tortured over 10 million people.

Among the famous perjurers already known to the Tribunal, witnesses for the defense of the SS, such as the former Führer of the SS and Police of the Oberabschnitt in Munich, SS-Obergruppenführer Baron von Eberstein, Colonel General of the Waffen-SS Hauser, the Chief of the SS Recruiting Section, Brill, or the SS judges Reinecke and Morgen, should by all rights rank foremost for the impudent lies to which they resorted in order to justify the SS and its members.

However, even falsehood has its limits. Carried to absurd proportions, it not only did not help the criminals, but instead served to expose them. It seems to me that the Tribunal will duly appreciate the testimony of Judge Morgen of the SS, who describes one

of the most brutal SS concentration camps, Buchenwald, as practically a sanatorium for the internees, abounding in good food and playgrounds, in easy work in the open air and a large library.

The documents which expose this criminal organization are in complete contradiction to the unintelligent lies of the "witnesses" for the defense of the SS. These lies are also contradicted by the irrefutable logic of facts—facts of the gravest crimes, the organizers and perpetrators of which were members of all the chief sections and organizations of the SS.

At the beginning of the war the SS organization consisted of the following main links:

(1) The so-called Allgemeine SS, where the SS member received general training before being assigned to the Waffen-SS or to one or another of the police organizations. The General SS served as a reservoir from which reinforcements were drawn for special Fascist organizations, such as the Gestapo, the SD, the administration of the concentration camps (that is "Group D"), and others.

(2) The Waffen-SS, whose activities the Defense and the defendants have so insistently tried to present as the "guard units" of the former German Army, and far removed from police activities. The Waffen-SS included, among other units, those organizations, the criminal character of which even the defense for the SS did not dare challenge. These were the camp commands of the Waffen-SS, who conducted mass extermination of the peaceful population and of the prisoners of war in the concentration camps. It was the "Waffen-SS" which also included the SS police regiments that made up the units responsible for the destruction of populated centers and villages, and the perpetration of innumerable crimes in the occupied territories of the Soviet Union and in the countries of Eastern Europe.

(3) The SS system included the SS economic administration in charge of concentration camps, the administration for the consolidation of the German nation, which put into practice the infamous doctrines of racial distinction, and all the Hitlerite police organizations, among them such agencies as Einsatzgruppen and Sonderkommandos.

It is hardly worth while disputing the assertions of the defense that the relation of the SS to the Police was "purely external" and is only to be explained simply by Himmler's "personal union." It is well known what importance Himmler attached to the fact that all the officials of the Police had to be members of the General SS, which served as the reservoir and the cementing nucleus of the entire SS police system of German Fascism. Amongst other evidence submitted to the Tribunal, there is a letter from Himmler to Kaltenbrunner dated 24 April 1943, in which he speaks of "the order of the

enrolment of the Sipo officials (Security Police) into SS membership" in cases where "the applicant is eligible both racially and ideologically, if he can provide guarantees as to the number of children, the health of all his kinsfolk, and proof that he is personally in good health and is not a degenerate."

To this dishonorable "Black Corps" of German Fascism was given a special role in the realization of the Fascist criminal plans. These degenerates dressed in the SS uniform and devoid of any idea of human morality were not only assured of impunity for their crimes, but they were daily indoctrinated with the idea that they were the "most valuable racial class, which would form the foundation of the future great German Empire."

They were repeatedly told this by Himmler and by the Reichsleiter and Gauleiter who had been raised by Himmler to high ranks in the SS and promoted up the ladder of the SS hierarchy, dependent on the value placed on their activities by the Reichsführer SS.

As an SS member, Ribbentrop, the Minister of Foreign Affairs of Fascist Germany, was not at all ashamed of being compared as a member of the SS to the murderer Pohl, or plunderer and executioner Globocznik; on the contrary, he was exceedingly proud of it.

"I shall always consider it a special honor to belong to this proud Führer corps, the corps which is of decisive importance to the future of our great German empire," wrote Ribbentrop in his letter to Himmler, when he was promoted from Gruppenführer to Obergruppenführer of the SS.

Thus one and the same SS system united the commandant of Treblinka, Unterscharführer Kurt Franz, the inventor of the "death-vans," Untersturmführer Becker, the SS experimenter on live persons, Dr. Rascher, and the Reich Minister and SS Obergruppenführer, Ribbentrop.

At a conference of the SS Gruppenführer in Poznan, in his speech on the unity of the SS and the Police, Himmler stated:

> "I am always doing something towards this end, a cord is being constantly drawn around these separate sections so that they may grow into one. Alas, if these bonds were ever loosened, then everything—you may be sure of this—would sink back into the old unimportance in one generation, and in a short space of time.... I think that we owe it to Germany, for the German Reich needs the SS organization. She needs it at least for the next few centuries."

In concluding his speech, he said:

> "When the war is won—then, as I have already told you, our work will start.
>
> "... that as a result of this order the greatest increase in the population will result through this careful breeding of the

Germanic people. In 20 to 30 years we really must be able to present the whole of Europe with its leading class. If the SS, together with the farmers—we together with our friend Backe—then organize the colony in the East on a grand scale, without any restraint, without any question about any kind of tradition, but with nerve and revolutionary impetus, we shall in 20 years push the national boundary 500 kilometers eastward....

"...we shall impose our laws on the East. We will forge ahead, pushing our way forward little by little to the Urals."

It is impossible to enumerate in a short statement all the grave crimes committed by the members of the SS. Nor is it necessary, since the evidence submitted to the Tribunal is too recent and vivid in our minds. I shall dwell briefly upon some questions which refer to the responsibility of separate SS groups, in connection with the objections which have been raised by counsel.

No matter to which of the special SS organizations an SS member belonged, first and foremost he was a member of the General SS. His expulsion from such membership signified loss of his position and of all the privileges connected with it.

In this connection I shall read one of the documents submitted by the Soviet Prosecution on the subject of the criminal acts committed by the Hitlerites against Soviet prisoners of war. In this case we have documents of the investigations conducted by the SS officials in relation to an "incident," as it is called in these documents, which occurred during the execution of a "special treatment" operation. The significance of this last term is well known to the Tribunal. In this particular case, a certain SS-Hauptsturmführer Kallbach, who investigated the so-called "corrective labor camp" for Soviet prisoners of war in Berdichev, decided to put to death 78 Soviet prisoners whose condition is described in the records of the interrogation by the commander of the camp as very seriously wounded. Some were without legs, some without arms and others had lost at least one of their limbs, only a few had no injured limbs, but these were so crippled as a result of other kinds of wounds that they were unable to work. The fact that the Soviet prisoners of war could not be utilized for work was the only reason for their murder.

The execution of the sentence was entrusted to three SS men, SS-Unterscharführer Paal, SS-Rottenführer Hesselbach and SS-Mann Vollprecht. These three SS men are characterized in the evidence as follows:

"I know that the three above-mentioned persons, whom I assigned to shoot the prisoners of war, had participated in mass executions of many thousands of persons in Kiev. The

local authorities, even since my arrival, had given them the task of shooting many hundreds of persons."

However, it so happened that, when 28 of the prisoners were being transported to the place of execution, they put up a heroic resistance against their executioners, killed two of them and managed to escape.

It was in connection with this that the investigation was ordered. The commander of the SS detachment in Berdichev was prosecuted, not for his orders to murder 78 sick innocent people, but for allowing the possibility of escape.

I have quoted this document not simply to remind you of one of the countless episodes of SS brutalities in the territory temporarily occupied by the SS, but to read a quotation in which a typical warning of responsibility for perjury is given by the investigating SS men prior to the interrogation. It states:

"... I have been notified of the substance of the forthcoming interrogation. It has been pointed out to me that the giving of false evidence on my part will result in punishment and expulsion from the SS."

Upon admission into the General SS, the future member of this criminal organization takes an oath, which includes the following words:

"... I take an oath to you, Adolf Hitler, Führer and Reichskanzler, to obey you unto death and all those whom you have appointed to command me."

And no matter where the SS man was serving, whether he was murdering people in Treblinka and Auschwitz, or torturing them during the interrogations in the torture chambers of the Gestapo, he always remained what he was—a stupid, ruthless member of the General SS who knew only two duties: blind obedience to the "Führer and Reichskanzler," and unconditional execution of every criminal order.

The organization of the Waffen-SS originated from the so-called Leibstandarte, Hitler's bodyguard, and the "Death's Head" Division, which was set up mostly in concentration camps.

In wartime the Waffen-SS were augmented, in addition to police divisions and units, by other units and formations, the so-called "camp commands," which carried out directly the extermination of millions of people and instituted the system of torturing prisoners before killing them.

This simple enumeration of the units composing the Waffen-SS fully proves their criminal character.

The Soviet Prosecution has submitted as evidence the sentence of the Military Tribunal of the Fourth Ukrainian Front and a report

of the Extraordinary State Commission concerning the atrocities of the German Fascist invaders in Kharkov and in the Kharkov area, from which it is evident that the units of the SS, particularly the SS Adolf Hitler Division under the command of Obergruppenführer Dietrich and the SS "Death's Head" Division under the command of Obergruppenführer Simon, are responsible for the extermination of more than 20,000 peaceful citizens of Kharkov and for the shooting and burning alive of prisoners of war.

In Kiev alone, during the period of the German occupation, there were more than 195,000 peaceful citizens tortured to death, shot, and poisoned in the "death-vans," most of them exterminated by SS units; for which, according to the reports of the Extraordinary State Commission, the former chief of the Waffen-SS in Southern Russia and in the Ukraine, Major General Troenfeld, together with SS Lieutenant General Hüttner and other commanders of the Waffen-SS are responsible.

In the town of Rovno and the Rovno district, the Germans exterminated 102,000 persons. Among many others, a soldier, Adolf Mitzke, belonging to the fourth squadron of the 17th SS Cavalry Division, testified how the SS men carried out these crimes; on the order of his regimental commander, Adolf Mitzke, together with the other soldiers of his regiment, carried out the shooting of peaceful citizens, among them women, and set villages on fire.

In the official note of the Minister of Foreign Affairs of the U.S.S.R., V.M. Molotov, dated 27 April 1942 and presented to the Tribunal under USSR-51, a description of atrocities committed by the SS Cavalry Brigade in the region of Toropetz is reported. I quote from the report:

> "In January 1942, when Red Army troops smashed the German SS Cavalry Brigade in the district of Toropetz, among the captured documents was found the report of the 1st Cavalry Regiment of the above-mentioned brigade on the 'pacification' of the Starobinsk district in Bielorussia.
>
> "The regimental commander reports that in addition to the 239 war prisoners shot by a detachment of his regiment, 6,504 peaceful inhabitants were executed. The report states that the detachment operated in accordance with Regimental Order Number 42 of 17 July 1941. The commander of the 2d regiment of the same brigade, Von Mahill, states in his 'Report on the conduct of the pacification operations in the District of the Pripet Marshes from 24 July to 11 August 1941': 'We drove the women and children into a swamp, but this did not have the desired effect as the swamp was not deep enough for them to drown. At a depth of one meter it was possible in most cases to reach firm ground (possibly sand).' In the same

headquarters, Telegram Number 37 was found, sent by the Standartenführer and commander of the SS Cavalry Brigade to a mounted detachment of the above-mentioned 2d Cavalry Regiment, dated 2 August 1941, which announces that the Reichsführer SS and Chief of Police, Himmler, considers the number of peaceful inhabitants who are being exterminated as 'too negligible,' points out that 'it is necessary to act radically,' that 'the commanders of the formations are too lenient in their conduct of operations,' and orders that the number of persons shot be reported daily."

The whole criminal activities of the SS units in the territory of Yugoslavia, Poland, and other temporarily occupied countries of Eastern Europe followed the same pattern.

I wish to bring to the attention of the Tribunal the numerous documents presented to the Tribunal by the Soviet and British Prosecution, in which the crimes committed in the territory of Yugoslavia by the SS division "Prince Eugen" are illustrated.

In particular I wish to draw the attention of the Tribunal to the Report Number 29, issued by the Yugoslav State Commission regarding the atrocities committed by the aforesaid SS division. This communication describes how the SS soldiers, members of the Waffen-SS, who called themselves "the German Guards," burned alive the entire population of villages, including women and children. I will remind you as well of the deposition given by the SS Major General August Schmidthuber, describing how, on the order of the commander of the 1st SS Battalion, Kaaserer, peaceful citizens were locked up in a church in Krivaya Reka, and then the church building was blown up. I refer the Tribunal to the well-known statement of the officers of that same division concerning the mass shooting of hostages and murdering of prisoners of war.

A secret directive of Himmler's was read before the Tribunal, by which it was shown that SS units were instructed to annihilate thousands of inhabited localities, towns, and villages in the temporarily occupied regions of the Soviet Union. In this directive Himmler wrote as follows:

"The aim to be achieved is that when areas in the Ukraine are evacuated, not a human being, not a single head of cattle, not a hundredweight of cereals, and not a railway line remains behind; that not a house remains standing, not a mine exists which is not destroyed for years to come, that there is not a well left unpoisoned. The enemy must really find a land completely burnt and destroyed."

In carrying out the criminal orders of the Reichsführer SS (Himmler's order of 10 June 1943), the Waffen-SS deported into

German slavery the populations of entire regions, driving the Ukrainian and Russian children into special concentration camps.

The so-called Waffen-SS were the specially selected SS units, composed in the main of volunteers as well as of members of the General SS, called upon to carry out the criminal plans of Hitler and his clique.

The attempts of the Defense and of the defendants themselves to declare the SS a kind of "German Guards" having nothing to do with any kind of police function and whose hands are unstained with the blood of innocent people, are in full contradiction with the ruthless and irrefutable facts. Nevertheless, we do not deny that among the soldiers of the Waffen-SS were some who were compelled to serve. However, the question of the degree of responsibility of any particular person is a question for competence of the national tribunals. Nevertheless, the Waffen-SS as a whole are an essential part of the system, and the SS organization is therefore undoubtedly criminal.

THE PRESIDENT: Shall we adjourn now?

[A recess was taken.]

MR. DODD: Mr. President, I am prepared to make a report on the attitude of the Prosecution concerning the application of the Defendant Seyss-Inquart to submit an affidavit. We are all in agreement in opposing the affidavit of Seyss-Inquart. It is really argumentative, as we read it. We have had it translated, and it does not raise anything new; it does express the defendant's attitude toward a number of documents that were in evidence, some as early as last January, and there are various comments in it about evidence and so on. But it seems improper to us that at this stage of the Trial the defendants should make such an offer. His counsel made his argument, and indeed he will have another opportunity himself to address the Tribunal. None of these matters, in our judgment, in our opinion, are proper, nor should they be admitted by the Tribunal at this time. Now there is one matter raised in this affidavit, the matter of two documents, 3640-PS and 3645-PS, of which the Defendant Seyss-Inquart says they were not introduced in evidence, although they were referred to by the French Prosecutor, M. Dubost; and that is so. And of course, M. Dubost and M. de Ribes and those other gentlemen of the French Prosecution with us agree that it was inadvertent, and that they should not have been there. And we have no objection to so stating to the Court—we wanted to state—we want the Court to understand that these two documents are not—were not actually admitted in evidence; and, of course, we should not have referred to them in our

argument. But other than that one matter which is raised, we see nothing that would be helpful to the Tribunal.

THE PRESIDENT: Is it in German?

MR. DODD: Yes, yes, Your Honor, it is in German. Our translation is not complete. It was done by one of our people hurriedly and is in outline form and for my own information. I can go through it paragraph by paragraph if the Tribunal would care to have me.

THE PRESIDENT: Very long?

MR. DODD: It is—no, it is not. My outline is one page and a little more than a half. The affidavit itself is six pages. Our analysis of it is a page and a half.

THE PRESIDENT: Mr. Dodd, if the only objection to the affidavit is that it is argumentative, is that really a very serious objection when there are so many documents?

MR. DODD: Well no, Sir, I expect it is not. Our objection is just what I have stated, and no more than that. I do not want to press it too much. If the Tribunal feels it would be better to have it in and have it translated, there is nothing in the affidavit that we need make any reply to. I feel perfectly sure of that, and I do not think it is worth pressing, really.

THE PRESIDENT: Well, the Tribunal thinks that in the circumstances it will be better to allow the affidavit to be offered in evidence. And the Tribunal notes that 3640-PS and 3645-PS have not been offered in evidence. And therefore we should . . .

MR. DODD: Yes, Mr. President, 3640-PS and 3645-PS were not offered in evidence.

THE PRESIDENT: And we shall therefore disregard any reference to them.

MR. DODD: Yes, Sir. As well I would like to inform the Tribunal concerning our attitude about the letter of Dr. Laternser's; we have no objection to this letter at all. We are all in agreement about it.

THE PRESIDENT: Thank you very much. Mr. Dodd said they had no objection to the letter. It will be . . .

DR. LATERNSER: Mr. President, there is a small paragraph in this letter that I should like very much to read into the record; two sentences of it.

THE PRESIDENT: Well, if the letter is in evidence, it is not necessary to take up time by reading it into the record. The Prosecution have agreed that the letter may be treated as part of the evidence of the record.

DR. LATERNSER: But since the witness Schreiber has given his testimony, I nevertheless consider it important that one very brief paragraph consisting of two sentences should be read into the record if possible.

THE PRESIDENT: Well, wait a minute. No, Dr. Laternser, the letter will be admitted as part of the evidence of the record. We do not desire that further time should be taken up on the matter.

DR. LATERNSER: Mr. President, with reference to this subject I today received another exhibit during the recess, but of course I do not know if the Tribunal is willing to accept it in evidence, and in order to complete this subject of the evidence, may I beg the Tribunal to allow me to present it. It concerns a document from which it can be seen that in the case of one of the Allied Nations bacteria warfare as a defensive and offensive weapon had equally been developed, and that 4,000 people were occupied with it. I should merely like to present it for that one reason so as to be able to submit a fact to the Tribunal which would be of importance for the proper judgment of this particular subject.

THE PRESIDENT: No, that falls within the principle, which we have decided over and over again, that such evidence is not admissible.

DR. LATERNSER: But since we are here concerned with a new subject, Mr. President...

THE PRESIDENT: Dr. Laternser: the Tribunal is perfectly well aware of the argument which you have presented to us that any investigations which were taken in bacterial warfare were done solely for defensive purposes. That argument is perfectly clear, and any other argument based upon allegations as to what the Allied Nations may have done is irrelevant.

GEN. RUDENKO: On 4 October 1943, in his speech addressed to the SS Gruppenführer in Poznan, Himmler stated:

> "We want a complete unity with the Party and all its organizations. It is very fortunate that we are completely united with the 'SA.'
>
> "The new Chief of Staff Schepmann considers his most essential task that of creating peace and accord among the old Party groups."

Thus the creator of those SS who in 1934 liquidated the heads of the SA Putsch, in 1943 confirmed the full unity of the SS with the SA and emphasized the importance of this Hitlerite criminal organization in the general conspiracy.

During the whole process of the growth of the Hitlerite Party and of the Hitlerite State, the SA was the criminal organization to

which the ringleaders of German Fascism attached special importance, considering it one of the main weapons for terrorizing and fooling their own nation and for preparing the ground for aggression against other nations.

It is no use to argue with counsel for the SA about the part played by this criminal organization in the common plan of the Fascist conspiracy.

Essentially, the plea of Herr Böhm was, generally speaking, devoid of any legal argument that would render it worthy of attention. It was a statement made from the viewpoint of a convinced Nazi, repeating, in a number of cases, the worst instances of Hitlerite propaganda, which counsel had carefully extracted from the SA Press.

DR. MARTIN LÖFFLER (Counsel for the SA): Mr. President, may I be allowed to make a brief objection to this very severe personal attack? Unfortunately Dr. Böhm has been prevented from appearing at today's session, but during the recess I have been able to ascertain from the General Secretary's list—which is also available to the Russian Delegation—that attorney Dr. Böhm has never been a member of the National Socialist Party. The reproach that in his pleading he wished to spread National Socialist propaganda is therefore entirely without foundation. In the whole of Germany there would not be a single normal person who, having kept aloof from joining the Party for the years during the Nazi regime, would now advocate Nazi propaganda at this Trial.

One more point, Mr. President. . . .

THE PRESIDENT: But we are not considering whether Defense Counsel belonged to the Party or not, and this observation of the Soviet Prosecutor does not say that Dr. Böhm was a member of the Party. It may be rather strongly expressed, but what he says is, this is the statement made from the viewpoint of the convinced Nazi. It is a perfectly different thing from saying that Dr. Böhm was a Nazi.

DR. LÖFFLER: Mr. President, I have nothing to add to the statement except that I am asking the Tribunal to take cognizance of the very difficult position in which the Defense find themselves, and to consider that it is impossible to represent the organizations of the Party without representing also the attitude, the point of view, of the Party. That is all I had to say, but if the Russian Prosecutor fails to find any legal argument in Dr. Böhm's final plea, in that case these are presented in great detail in the excellent memorandum of my colleague Dr. Klefisch, and we were told that there would be a reply to that final plea. This reply has so far not been received.

THE PRESIDENT: General Rudenko, the translation which we have got of your statements is possibly ambiguous, and therefore the Tribunal would like to be assured that what I said about it was accurate and that you were not suggesting that . . .

GEN. RUDENKO: Quite right, Mr. President. You have said precisely what I am asserting here, that the speech was simply made from the Nazi point of view, but I have no confirmation of the fact that Böhm himself did belong to the Party, and I think that such polemics are admissible.

THE PRESIDENT: I think perhaps, General Rudenko, that it would be proper for you to withdraw any suggestion that Dr. Böhm himself was a convinced Nazi.

GEN. RUDENKO: But I never did assert that Dr. Böhm was a convinced Nazi. I am simply asserting that, judging by his speech, he might possibly have the Nazi point of view.

THE PRESIDENT: What you mean is that Dr. Böhm was representing a certain point of view, and, of course, as counsel he does not represent his own point of view; he merely represents the point of view of the case which he is presenting. Is that what you meant?

GEN. RUDENKO: Yes, of course, Mr. President.

THE PRESIDENT: Go on.

GEN. RUDENKO: The "Sturmabteilungen" or "SA" were the first striking force in the hands of the conspirators, the first military "terror" organization founded by them. They were organized by Hitler in 1921, with the full support of the Reichswehr, who were hoping for revenge. The nucleus of the "SA" was made up of men such as Streicher and Röhm, rabid anti-Semites, chauvinists, supporters of the idea of the conquest of "living space," of officers who left the Army, and soldiers of the defeated Kaiser's army.

The shock units were composed of the most reactionary elements seeking revenge, and adventurers joined the SA tempted by the decorative side of this criminal organization and seeing in it a possibility of participating in pogroms and plunder. From the very beginning the SA was strictly a voluntary organization. This principle remained in force during the whole process of development of the shock units (SA).

From the Munich Putsch in 1923 until the seizure of power by the Hitlerites in 1933, the SA remained a faithful weapon in the hands of the Hitlerite Fascist clique, securing for it the "mastery of the streets" and the elimination of political opponents.

Together with the SS, the shock units were an integral part of the Hitlerite Party. This fact was officially declared in the

ordinance of March 1935 *(Reichsgesetzblatt,* 1935, Part I, Page 502), and the same was to be found in the organizational charter of the Hitlerite Party.

In his pamphlet *The SA,* SA Sturmführer Bauer wrote:

> "The public would never have learned of the stirring speeches and the propaganda of our small faction in the Reichstag or of the aspirations and aims of the Party, had it not been hearing the footsteps of the marching SA units and their battle songs."

But the "footsteps of the marching SA and their battle songs" were not the only thing heard by the German public. They were far more aware of the blows of rubber truncheons, the shots fired at political opponents, and the pogroms in the working-class quarters. For the chief Fascist conspirators, the main value of the SA lay precisely in their function as a weapon to be used for pogroms and terror. During the period of the struggle for power and afterwards, the SA were first of all an instrument of brute force, a means for the elimination and extermination of political opponents.

This situation was very frankly depicted by Goebbels in a speech delivered by him in 1935. He then stated:

> "The internal political opponents did not just disappear for some unknown secret reason. No, they disappeared because our movement had at its disposal the strongest weapon in the country, and this strongest weapon was the SA units."

The Tribunal will remember the evidence given by the witness Gisevius, of the terror caused by the SA in the streets of German towns, of the "pogrom-makers" in SA uniforms, who beat, killed, scoffed at human dignity, and transformed the headquarters of the SA into houses of torture.

It is true that when the Hitlerites came to power, another terroristic organization was actually formed, which became the principal executor of their plan, and with the SA formed the reserve of that great police machinery which was set up by German Fascism. These were the SS, and the "brown shirt" men surrounding Hitler had to stand aside and give way to the "Black Corps" of the SS as head of the Hitlerite Party organization.

Göring's official biographer speaks of the wide use of the SS as a political police reserve. He notes that when forming the Gestapo, Göring admitted into the ranks of this organization—one of the most dangerous criminal organizations of German Fascism—many members of the SA, "they being the most reliable from the political point of view."

Evidence has already been presented to the Tribunal, showing that after the Fascists came to power, members of the SA together with the SS formed detachments for guarding the concentration camps.

Describing the concentration camp of Oranienburg, the SA Sturmbannführer Schäfer states:

> "The most reliable and daring members of the SA were chosen for work in the camp, that is, they were the permanent camp guards. In this way we formed a nucleus of experienced guards, who were always ready for action."

It seems unnecessary for me to dwell on the way the prisoners were treated in those camps and the behavior in the concentration camps of the men of the SA in their role of executioners. The men of the SA directly organized the first anti-Semitic pogroms. This is proved by the documents submitted by the Prosecution and by the original reports of the SA commanders of units and detachments. As with the SS, the SA were imbued with the same spirit of ferocious anti-Semitism, which finally led to the establishment of the Treblinka and Chelmno camps.

However, in analyzing the criminal character of the SA organization, another of its important functions in the execution of the general plan of development of the Hitlerite conspiracy must not be omitted. The SA was the organization under whose cover the mass training of the military personnel for the Wehrmacht was carried out. This personnel was later on called upon to carry out the Hitlerite plans of aggression. This criminal activity was carried out with a maximum degree of secrecy with regard to the outer world.

> "In addition to my instructions... dated 11 July 1933, I am compelled to ask all SA authorities to exercise the greatest caution with regard to any publicity given to the SA service, not only in the press, but also in the information and news sheets of the individual SA units. Just these last few days the Reich Ministry of the Interior, at the request of the Foreign Office, has given strict instructions to all Reich authorities, whereby the strictest control is to be exercised on all publications which might lead other countries to impute German infringements of the terms of the Versailles Treaty."

This secret order of the SA Chief of Staff fully refutes the assertion of the Defense relative to the "peaceful character" of the SA and the "purely sporting" character of their activities.

The organization structure of the SA with its brigades and regiments had a purely military character. From the moment of their inception the SA units, under the guidance of the most

reactionary officers of the Reichswehr, who had joined the Hitlerites, began the preparation of cadres for future war. Later, after the seizure of power by the Hitlerites, the SA became an organ for mass military training, and officers of the Wehrmacht in SA uniforms carried out in these units a purely military training of SA men. The leaders of the SA well understood the position they occupied after the seizure of power in the realization of the Hitlerite plans of aggression.

In this connection it is pertinent to present again to the Tribunal a short excerpt from an article published in the organ of the SA, *Der SA-Mann,* of 6 January 1934:

> "...the SA man, according to the will of the Führer, stands as the defender of the National Socialist revolution before the gates of power, and will remain there forever. There are still gigantic missions awaiting fulfilment, which would be unthinkable without the presence and the active co-operation of the SA.
>
> "What has been accomplished up until now, the seizure of power in the State and the elimination of those elements who are responsible for the pernicious developments of the post-war years as the bearers of Marxism, liberalism, and capitalism, are only the preliminaries, the springboard for the real aims of National Socialism."

In the entire subsequent development of Hitlerism the SA men were a loyal weapon in the hands of the criminal Hitlerite clique. During the war, through a special directive, the members of the SA were entrusted with the guarding of the prisoners of war and of the "workers from the East," not being allowed to alleviate in any way the brutal man-exterminating regime established for them. Members of the SA acted as guards in several "worker camps."

The SA was one of the most criminal mass organizations of the Hitler Party. The criminal activity of its members, with the exception of the Veterans' Union and persons belonging to the SA sports clubs, has been fully proved in the course of this Trial. The SA of the German Fascist Party, whose activity comprises a greater part of the crimes of the Hitler regime, must undoubtedly be declared a criminal organization by the Tribunal.

The Gestapo was founded by the Defendant Göring on 26 April 1933 at the time when he was Prime Minister of Prussia, and during the early period of its existence it was directed by him personally.

Gradually, however, the Reichsführer SS Heinrich Himmler took over all control of the Political Police of the Reich territory into his own hands. The law of 10 February 1936 declared the Gestapo to be a special police organ for the whole Reich. By his decree

of 17 July 1936, Hitler appointed Himmler the Chief of the German Police, thus legitimizing the "personal unity" already achieved by the SS and the Police on the whole.

In harmony with this principle of "personal unity," that is, unity of leadership, Himmler in his very first decree on the structure of the German Police, dated 25 June 1936, appointed Reinhard Heydrich as Chief of the Sipo (Security Police), which already comprised within the same system both the Gestapo and the Criminal Police. Heydrich's successor, after his death, was the Defendant Kaltenbrunner.

In 1939, in consequence of the consolidation of the leading role of the SD in the general security scheme of the Nazi State, and for purposes of the further unification of the Police under one single control, a reorganization of the central security organizations took place. This resulted in the fusion of the SS Main Office with the Main Office of the Security Police into a single SS semi-governmental, semi-Party organization—"Reich Security Main Office," or the RSHA.

Thus the Secret State Police, then briefly known as "Gestapo," and up to then existing as part of the Main Office of the Security Police, became Amt IV of the RSHA.

The functions of the Gestapo in the general system of the security organs of the Third Reich were clearly defined by the same Heydrich in an article published in the German periodical *The German Police.* He defined the role of the SD as that of political intelligence within both the Nazi Party and the Nazi State, whose task included the study and analysis of the political atmosphere and of the political trends and tendencies, both inside and outside the bounds of the Reich, for the purpose of keeping the Nazi leaders informed. The function of the Secret State Police, as Heydrich saw it, was to reveal and render harmless those political elements within the Nazi regime which were hostile and unreliable.

The whole of the Gestapo with its system of central, regional, penal, and other special branches and formations, had as its object the accomplishment of this cardinal point of its program. For its fulfilment, this function required the most careful individual selection of the Gestapo personnel. These were selected from amongst the most qualified personnel of the general Police and of the administration, who had already proved to be fanatical adherents of the Hitlerite regime, and also from amongst the regular employees of the SD. The latter were usually given supervisory positions in the Gestapo.

The affidavit submitted by the former chief of Amt VI of the RSHA, Walter Schellenberg, establishes that 75 percent of the Gestapo employees were also members of the SS. They had either

been members of the SS prior to entering the Gestapo or else they became members as soon as they started their careers in this criminal and terroristic organization. The number of Gestapo employees in the period of 1934 to 1945 reached between 40 and 50,000. Such a staff, to quote Fouché, allowed the Gestapo "to have eyes to look everywhere and hands to seize anyone."

The criminal activity of the Gestapo did not confine itself merely to the territory of the Reich. During the period of preparation for aggression, it was the Gestapo to whom was entrusted the task, jointly with the SD, of organizing one of the first operational groups or Einsatzgruppen intended to function in the territory of the Czechoslovakian Republic.

With the beginning of hostilities and in conformity with the plan already prepared and approved, the Gestapo placed at the disposal of the Armed Forces a certain percentage of its experienced workers to organize the so-called "Secret Field Police," the GFP. The GFP units in the Army exercised the functions of both the Gestapo and the Sipo in the Reich and were also empowered with wide police and punitive powers directed against the civilian population and the guerilla fighters in theaters of military operations.

From the very beginning of its existence the Gestapo had wide powers in connection with extra-judicial measures of reprisal directed against elements threatening the Nazi State or the Nazi Party. One of the main types of reprisal used against such elements was the utilization of the right of "preventive arrest" and "preventive imprisonment," which the Gestapo used widely both in the territory of the Reich and in the areas afterwards annexed or occupied by Germany. The places of preventive arrest were the widely-known and notoriously terrible German concentration camps. Confinement in a concentration camp could be effected through a simple written order signed by the Chief of the Security Police and the SD, Heydrich, by Kaltenbrunner, who later on replaced him, or on the order of the chief of Amt IV of the RSHA, Müller. Frequently the order of confinement in a concentration camp was issued personally by the Reichsführer SS and Chief of the German Police, Heinrich Himmler.

Never did the victim of preventive arrest know for just how long he would have to undergo a period of torture and suffering; the length of confinement depended entirely on the arbitrary will of the Gestapo. Even when the Gestapo knew the length of time that it planned to keep the man in prison, it still was strictly forbidden to disclose this either to the prisoner or to his relatives.

These concentration camps were the prototype of the extermination camps which materialized in the subsequent period of

aggressive operations and which generations to come are bound to remember with horror, namely, Maidanek, Auschwitz, Treblinka, and many others.

As the punitive executive organization of the Nazi State, the Gestapo had close connections with the Nazi Party. In the appendix to the decree issued by the Reich and Prussian Minister, dated 20 September 1936, it states without any ambiguity that "the special functions of the Security Police demand the closest and fullest mutual understanding and collaboration... also with the Gauleiter of the NSDAP...." In studying the decree of 14 December 1938 concerning the collaboration of the Party organs with the Gestapo it is easy to see that there existed the closest contact between the various organizations of the Fascist conspirators, especially between the Gestapo and the Party leaders. Defendants Hess and Bormann were always careful to maintain close contact between the Party and the Gestapo.

As I have already stated, together with other criminal Fascist organizations, the Gestapo actively participated in the preparation of plans for the seizure of territory belonging to other states.

The list of 4,000 Yugoslav citizens, compiled in 1938 and seized in May 1945 in the Gestapo headquarters in Maribor, proves beyond doubt that the Gestapo participated in the plans for the invasion of Yugoslavia in its own special way. We also see from the testimony of Dragomir Jovanovich, one of the Yugoslav Quislings, who was chief of the Serbian police during the German occupation, that the Gestapo organizations for Yugoslavia were planned in advance. In accordance with a preconceived plan, the police posts were distributed among the German residents of Yugoslavia.

Exhibit Number USSR-509, submitted to the Tribunal by the Soviet Prosecution, likewise shows that for Czechoslovakia also the agencies of the Reich Security Main Office planned the functions of the SD and the Gestapo long before the actual occupation of the country.

The report of the Czechoslovakian Government points out still another type of participation by the Gestapo in planned aggression. The Reich Security Main Office also placed in Czechoslovakia agents for assassinating, or for kidnapping and carrying off to Germany, known anti-Fascists. The fact that the Gestapo participated in carrying out Germany's aggressive plans is also confirmed by a series of documents which show that even before the actual perpetration of the treacherous attack on Russia the Hitlerite blackguards had compiled lists of persons, personnel files, and other data regarding "important officials of the government organs and the community leaders of the Soviet Union to be annihilated." For instance, together with the SD and the Criminal Police, the Gestapo prepared the

"special intelligence guide for the U.S.S.R.," "The German Intelligence Guide," "Lists of persons whose residence must be determined," and other similar intelligence reference books and lists of persons.

The criminal activity of the Gestapo connected with plans for aggression, both within the Reich itself and in the West, has already been dealt with by my respected colleagues. For that reason I shall pass on to the subject of the Gestapo crimes in the temporarily occupied territories of the U.S.S.R., Yugoslavia, Poland, and Czechoslovakia.

THE PRESIDENT: General Rudenko, what is the reference to "The German Intelligence Guide," "List of persons whose residence must be determined," and other similar intelligence reference books and lists of persons? USSR-3 is what I have got. Is that the right document?

GEN. RUDENKO: Yes, USSR-3, Mr. President.

THE PRESIDENT: Thank you.

GEN. RUDENKO: The crimes which the Hitlerites had committed with the help of the police organization in the temporarily occupied territories of Czechoslovakia, Yugoslavia, and Poland are of the same pattern. The various Gestapo organs were the executive machinery which carried out most of these crimes.

The very first mass operation for annihilating the Polish intelligentsia, the so-called "Operation AB," was conceived by Frank, approved by Hitler, and perpetrated by men of the Gestapo. It was the agents of the Gestapo who, with the aid of several SS units and under the direction of the SS and Police Leader for Poland, Obergruppenführer Krüger, as well as Brigadeführer Streckenbach, succeeded in exterminating several thousand Polish intellectuals when carrying out this atrocious mass operation.

In accordance with Frank's decree of 9 October 1943, the notorious "Standgerichte" (Summary Courts), created "to suppress attacks on the work of German reconstruction in the Government General," also consisted of Gestapo agents.

Again it was the Gestapo which carried out the terrible reprisals against the clergy which resulted in the murder of about 700 priests and the imprisonment of about 3000 priests in concentration camps as early as January 1941.

As is thoroughly proven by the documents submitted by the Soviet Prosecution, the Gestapo established special mass extermination centers for the Jewish population of Poland. In contrast to such extermination camps as Maidanek and Auschwitz, which were under the jurisdiction of the SS Economic and Administrative Main Office, the secret extermination camp in Chelmno, where over

340,000 Jews were done away with by means of murder vans, was both founded and directly administered by the Gestapo, which created for the purpose a special unit "Sonderkommando Kulmhof." This Gestapo Sonderkommando was under the administrative supervision of the Gestapo chief in the city of Lodz, Braunfisch. It was also the Gestapo which founded Treblinka, the prototype of all subsequent extermination camps. Eichmann's plan for the extermination of the Jews in Europe, with the help of special extermination camps created for the purpose by the "D" Section of the SS, originated in the Gestapo, where Eichmann worked as subordinate of the Gestapo official Müller. It was the Gestapo that was responsible for the annihilation of 3,200,000 Jews in Poland, 112,000 in Czechoslovakia, and 65,000 in Yugoslavia.

It was the Gestapo that introduced and practised in the occupied territories of Eastern Europe the criminal system of hostages and the principle of collective responsibility, thus arbitrarily and constantly widening the number of persons liable to reprisals. For example, it was the Gestapo that together with the Defendant Frank issued the notorious decree of mass reprisals with regard to the "families of saboteurs," the decree which stated that:

> "... not only should the seized saboteurs be executed on the spot but also all the male kin of offenders should be immediately shot, while all female relatives over 16 years of age should be confined in concentration camps."

What went on in Poland is typical of Gestapo behavior not only in Poland, but applies also to Czechoslovakia and Yugoslavia. 200,000 persons passed through the Gestapo prison in Brno, Czechoslovakia, during the period of occupation alone. Only 50,000 of these were freed. Others were killed or sent to slow death in a concentration camp. The order of 9 March 1942 gave the Gestapo the right to use "preventive confinement" and "protective custody."

Thousands of Czech patriots, particularly physicians, teachers, lawyers, and clergy were arrested even prior to the war. In addition lists were compiled in each region of persons liable to be arrested as hostages at the first sign of disturbance of public order or security. Karl Hermann Frank, addressing leaders of the "movement for national unity" announced in 1940 that 2,000 Czech hostages, then in concentration camps, would be shot unless Czech leaders signed a declaration of loyalty. When an attempt on Heydrich's life took place, many of the hostages were executed.

In 1939 the Gestapo called together factory directors and warehouse supervisors of the various Czech industrial concerns. They were made to sign the following statement: "I am cognizant of the fact that I shall be shot immediately if the plant stops work without a justifiable cause." Schoolteachers in Czechoslovakia

similarly had to sign declarations making themselves responsible for the loyalty of their students.

It was the Gestapo which was responsible for that unheard-of crime of the annihilation of the village of Lidice and its population.

The Gestapo terror in Yugoslavia assumed an especially vicious character. The confirmation of the fact can be found in the following quotation from Report Number 6 of the Yugoslav State Commission for the Investigation of War Crimes:

> "A group of hostages were hanged in Celsje (Cilli) on hooks used by butchers to suspend uncut meat. In Maribor, victims worked in groups of five, placing bodies of shot hostages into boxes and then loading them on to trucks. As each five-man team finished its job, it was shot and the next group of five persons replaced it in the loading job. This went on continuously. The Sodna Street in Maribor was covered with blood from these lorries. The number given of 50,000 victims appears too small, as several hundred were shot each time, in Granz as many as 500 being murdered at once."

Numerous documents have been submitted to the Tribunal dealing with the mass shooting of hostages and signed by the competent regional chiefs of the Gestapo in Yugoslavia. I shall not dwell upon the details of these documents, as I suppose the Tribunal still has them clearly in mind.

The legal proceedings have thoroughly revealed those monstrous crimes which the Gestapo committed in the temporarily occupied Soviet territory. There the Gestapo personnel functioned either among the operational units—the Einsatzgruppen, the Einsatzkommandos, and the Sonderkommandos of the SD and of the Security Police—or else it comprised the Secret Field Police, which was also partly composed of both Gestapo and Criminal Police officials.

As a rule, it was the Gestapo officials who on all occasions carried out the inhuman executions and mass actions, acting under the general political leadership of the members of the SD staff and with the assistance of officials of other police organizations, as well as units of the Waffen-SS, widely used for these purposes. Numerous cases of mass murder and torture of peaceful Soviet citizens by the Gestapo have been established by the Tribunal. As an example I shall content myself with the description of separate characteristic facts.

In the small town of Wjasma alone, by order of the chief of the Gestapo, several thousands of peaceful citizens were killed or tortured to death. The Fascist monsters not only killed their victims, but made them dig their own graves. In the village Zaitchiki, in

the Smolensk district, men of the Gestapo drove into one house 23 old men, women, and children and set the house on fire, burning alive all those who were inside. In the psychiatric hospitals of Riga, Gestapo men exterminated all the inmates of these asylums. As stated in the report of the Extraordinary State Commission on the crimes of the German Fascist usurpers in the town of Rovno, in the Rovno district, as retaliation for each act of resistance, the Gestapo men perpetrated mass murder. When a German judge was killed by an unknown person in November 1943 in Rovno, the Gestapo shot more than 350 prisoners who were then being held in the town prison.

It is known from the report of the Extraordinary State Commission on the crimes of the German Fascist usurpers that the Gestapo used "death-vans" for the extermination of Soviet citizens. In the town of Krasnodar and the Krasnodar region, the Gestapo men, forming part of operational groups, exterminated through poisoning by carbon monoxide more than 6,700 Soviet citizens, including women, old men, and children who were under treatment in the Krasnodar hospital, as well as persons held in the Gestapo prison.

In the outskirts of the town of Krasnodar, in a big anti-tank trench, several thousands of corpses of Soviet citizens were buried who had been poisoned by gas and thrown there by the Gestapo.

In the Stavropol region 54 children who were seriously ill and were being treated at the health resort of Tiberda were poisoned by gas in death-vans, as were also 600 patients of the Stavropol psychiatric hospital.

The evidence given by Kovaltchouk, who lived in the Stavropol region, gives us an idea of the tortures practised by the Gestapo. They interrogated at night only. These interrogations were made in a separate room, where special torture devices had been set up, amongst them chains with metal bars fixed in the concrete floor, to which the prisoner's arms and legs were chained. The arrested person was first of all stripped naked, then laid on the floor, his hands and legs shackled, after which he was beaten with rubber sticks. Sometimes a wooden board was placed on the back of the victim and sharp blows were then dealt with heavy weights on the board.

The torture chamber was arranged in such a way that when an arrested person was being tortured, the other arrested people, who were in an adjoining room awaiting interrogation, were able to watch the scene. When after torture a prisoner became unconscious, he was thrown aside by the modern inquisitors and the next victim, in many cases already half unconscious, was dragged into the room. These unheard-of tortures were used by the Gestapo even on women.

I shall mention one example only. Such tortures during interrogation were most extensively used throughout the occupied territories of the U.S.S.R. Medieval tortures were used during interrogations on special orders emanating from the RSHA and Müller, Chief of the Gestapo. In one of those strictly secret orders the authorities gave the following instructions: "Third degree can include the following treatment: a very simple diet (bread and water), a hard bunk, a dark cell, deprivation of sleep, exhausting drill, beating with birch rods."

The intelligentsia, including distinguished men of science and art who were in the Soviet territories temporarily occupied by the Germans, were likewise subjected by the Gestapo to unheard-of torture and persecution. The persecution by the Gestapo of representatives of the intelligentsia was carried out in accordance with a plan which had been elaborated beforehand. For instance, before the German troops had occupied Lvov, detachments of the Gestapo had in their possession lists of the principal representatives of the Lvov intelligentsia who were to be exterminated. Immediately after the occupation of Lvov by the Germans, mass arrests and shooting of professors, physicians, lawyers, writers, and artists started. Paying no heed to the human dignity of their victims, the Gestapo subjected the arrested scientists to the most cruel tortures, after which they finally shot them.

An investigation carried out by the units of the Red Army, after Lvov had been freed from the German occupants, showed that over 70 prominent scientists, technicians, and artists had been killed by the Germans, their bodies being subsequently burned by the Gestapo. Fearing to be held responsible for these acts, the Fascist jackals painstakingly tried to conceal the facts about the extermination of the Lvov intelligentsia.

The Gestapo also took part in the torture and killing of prisoners of war. During the court proceedings a directive of Department IV of the Reich Security Main Office, dated 17 June 1941, was read. It concerned the activity of detachments of the Security Police and SD in the prisoner-of-war camps. Your Honors also know the directive of Müller, dated 9 November 1941 and sent to all departments of the Gestapo, concerning the disposal of the bodies of prisoners who had died on their way to the place of execution.

The written testimony of Kurt Lindorf, a former employee of the Gestapo, is at the disposal of the Tribunal. This document concerns the execution of Soviet political commissars and conscripted Jews. Known too is the order of the Chief of the Security Police and SD which was transmitted to the local offices of the Gestapo and concerned the sending of certain categories of escaped officers from

prisoner-of-war camps to Mauthausen concentration camp for the carrying out of the "Kugel" action.

The Tribunal is acquainted with the order of the commander of the 6th Military District, dated 17 July 1944, stating that recaptured escaped prisoners of war lose their rights and are to be turned over to the Gestapo, as well as with Keitel's order to the Armed Forces, dated 4 August 1942, which stated that the taking of action against individual paratroopers and groups of paratroopers belongs to the jurisdiction of the SD and the Gestapo.

The Gestapo actively co-operated in the deportation for German slave labor of thousands of peaceful citizens from the territories temporarily occupied by Germany and inflicted cruel repressive measures upon these persons on their arrival in Germany. In a like manner, Müller, the Chief of the Gestapo, in his telegram of 16 December 1942, stated that the Gestapo could arrest some 45,000 Jews to serve as workers in the concentration camps.

In the directive of 17 December 1942, Müller writes of this in connection with 35,000 Jews. In the secret order of 18 June 1941 Müller gave instructions to the Gestapo concerning the indispensable measures to be taken in order to prevent agitation among foreign workers.

The criminal activity of the Gestapo is especially horrible in connection with the extermination of Jews. The affidavit of Wilhelm Hoettl, dated 7 November 1945, establishes the fact that the Gestapo exterminated some 6 million Jews.

In the reports of the Extraordinary State Commission set up for the investigation of German Fascist atrocities in the territory of the U.S.S.R., and in other documents as well, are brought forward innumerable proofs of torture, of various outrages, and of mass murder of Jews by the Gestapo men.

The court proceedings have fully confirmed the charge submitted against the criminal activity of the Gestapo. As an organization of bloodthirsty mass terror the Gestapo must be recognized as a criminal organization.

The Security Service or "Sicherheitsdienst" was usually referred to in the official police documents under the abbreviation of "SD." It was a secret espionage SS organization of the Party. The SD, as well as the SS, was organized by Himmler.

The SD was that secret organization within the SS system which, after the seizure of power by the Hitlerites, had speedily merged with the police agencies and had promptly been installed in the leading secret police positions and the cadres of both the SA and the SS. It had played a leading role in the German scheme of political intelligence and "preventive examination" of the undesirable elements both before and after the formation of the RSHA.

The SD stood particularly close to the central headquarters of the criminal Nazi conspirators, that is to say, the Party Leadership, and that is why the SD participated most actively in planning those police activities which invariably accompanied all Hitlerite plans of aggression.

As will be shown below, it was the SD which created the first "Einsatzgruppen," supplied these predatory organizations of German Fascism with executive personnel, and prepared the atrocities which were later committed in the occupied territories of Poland, Yugoslavia, the Soviet Union, and other countries.

Attempting to exempt this criminal organization from the responsibilities with which it is charged, the Defense started an argument about the meaning of the very term "SD." The reasons for the Defense starting this terminological discussion are quite clear. The Defense endeavored to support Kaltenbrunner's version of the SD as an organization whose functions were strictly limited to the Reich domestic information services, which remained entirely apart from all police functions.

The Defense began this argument so that only the most apparent part of the criminal activity of the SD would be revealed, while the rest could hide behind such terms as "general information services of trends and tendencies among the different circles of German society." All the political and police functions of the SD as a leading organization of the SS police machinery would stand unrevealed.

In reality, however, the SD was a widely-spread espionage organization of German Fascism, which actively contributed to the realization of the criminal plans of aggression and operated both inside and outside Germany, in the occupied regions and abroad. Together with the Gestapo, it was the SD cadres who formed the backbone of the Einsatzgruppen, where it was always the SD personnel that occupied leading posts.

The functions of the SD can be divided as follows:

(1) The general information service which covered, as shown by the SD official documents, the "Lebensgebiete" or spheres vital to the German Reich, all Government offices, and all the best social circles of Fascist Germany.

(2) The special tasks, with which was connected the compilation of card files and lists of persons, primarily with reference to countries which were to be invaded. The card files and lists contained names of people who were to be subjected to the "special treatment," that is to say, either destroyed or confined in concentration camps.

(3) The supplying of personnel to those criminal organizations which were directly concerned with the carrying out of the Hitlerite plans for the annihilation of the politically undesirable elements

and of intellectuals in the occupied territories, as well as with committing bestial acts of terrorism and execution. The entire staff of the SD consisted of SS men. This is understandable considering that the SD was an offspring of the SS and up to the very last moment was referred to as the "SD of the Reichsführer SS." The many-branched SD system included the following:

Department III of the RSHA (Amt III), which consisted of the domestic and occupied regions political intelligence service; Department VI of the RSHA (Amt VI), consisting of the foreign intelligence service, headed by one of the closest associates of Himmler, Walter Schellenberg, whose testimony is well known to the Tribunal; and Department VII (Amt VII), sometimes called the department for ideological warfare. The latter also included a number of very important auxiliary branches which formed the analytical apparatus for the espionage activities of the SD at home and abroad. In order to refute the statements of the Defense I should like to refer to one of the documents showing the actual position of the SD in the police and SS scheme of Hitlerite Germany.

I am speaking now of the document entitled "Utilization of the SD in case of emergency in Czechoslovakia." The document is marked "Secret" and is dated June 1938, that is, more than nine months before the actual seizure of Czechoslovakia. It was found by the Red Army among the Berlin files of the SD and has been submitted to the Tribunal by the Soviet Prosecution.

The contents of the document leave no doubts, first, as to the facts of the active SD participation in the preparation and realization of the criminal plans of aggression, and secondly, of the fact that it was specifically the SD that both initiated and organized the Einsatzgruppen.

I have some excerpts from this document, but I will skip them. The whole territory of Czechoslovakia was, in conformity with the SD regional organization in Germany, divided beforehand into important (Oberabschnitt) and small (Unterabschnitt) territorial units, and for each of these units special Einsatzgruppen and Einsatzkommandos were prepared and staffed. In the text of the document we can see that a system of Oberabschnitte for Prague, Bohemia, Moravia, Silesia, Waagtal, and others, was prepared and planned. The staffing of the Einsatzgruppen and Einsatzkommandos was entirely a task of the SD. In the document we read in this connection that "the staffing of the SD agencies should be effected with respect to the following considerations: (1) the requirements of the SD itself; (2) the requirements of economy."

An entire program was prepared for training members of the Einsatzgruppen to be recruited from collaborators and Sudeten-Germans. The utilization of "suitable persons" of German origin

living in Czechoslovakia was equally foreseen, and special mention was made of the point that:

> "... it must, however, be considered that in spite of all precautionary measures we shall not have many such people at our disposal, since under certain conditions a considerable number will be arrested, deported, or killed."

The Einsatzgruppen, organized and trained on German territory, were to be concentrated near the German-Czechoslovakian border in order to move into Czechoslovakian territory at the same time as the invading armies. In this connection the document says—I draw the attention of the Tribunal to Page 55:

> "In compiling the records the official has already to make remarks like arrest, dissolution, dismissal, shadowing, confiscation, surveillance by the Police, cancellation of passport, *et cetera.*"

The compilation of the records and reference lists in which the names of people were entered who were to be killed in the territories temporarily occupied by the Germans was one of the immediate functions of the SD. The killings were then carried out by the Gestapo or special SS units, by Sonderkommandos or the SD.

In preparation of the attack on Soviet Russia the SD officials compiled a whole series of reference lists in which the names of members of the Soviet intelligentsia and political leaders were entered whose elimination was intended in conformity with the cruel directives of the Hitlerite criminals.

Appendix Number 2 to Operational Order Number 8 of the Chief of the Security Police of the SD, dated 17 July 1941, said that long before the beginning of the war against the Soviet Union the Security Service had compiled the "German research book," lists of addresses, and a "special research book for the U.S.S.R." where all the names of "Soviet Russians considered as dangerous" were entered. We know from the same order of Heydrich's what the intentions of the Hitlerite criminals were with regard to those "dangerous Russians."

All of them, without any judicial sentence whatsoever, were to be exterminated by the Sonderkommandos in conformity with Orders Number 8 and Number 14 of the Reich Security Main Office, dated 17 July and 29 October 1941.

The same criminal task was accomplished by the SD before the invasion of Yugoslavia. The Soviet Prosecution presented to the Tribunal a "research book" prepared by the so-called German Balkan Institute, "Südostdeutsches Institut," which was connected with the SD. This book contained the names of over 4,000 Yugoslav citizens who were to be arrested immediately after the invasion

of Yugoslavia. The completed book was transmitted to the executive police, that is to say, the Gestapo, which itself was to undertake these arrests.

This book was found among the records of the Gestapo at Maribor and bore the following note made by a member of the SD: "The persons mentioned herein are to be arrested and the RSHA is to be informed immediately that the action has been carried out."

This SD institute carried on a special undermining activity by preparing the Fifth Column in Yugoslavia. In connection with this a member of the SD, the Dean of the Graz University, Hermann Ibler, issued a special pamphlet which was entitled *Des Reiches Südgrenze* and was marked "strictly secret." It contained a list of the Fifth Column agents in Yugoslavia.

It was the SD especially who carried out political provocation abroad. The former Chief of the Security Police and SD, Kaltenbrunner, had to confess to that when interrogated by the representative of the Soviet Prosecution. He himself could not deny his signature on the letter to Ribbentrop concerning the allocation by the Ministry for Foreign Affairs of one million tomans for bribing the voters in Iran.

The SD members understood perfectly the part they were to play in the occupied territories in the execution of the inhuman plans of the Hitlerites concerning the extermination of the enslaved nations. From this point of view a German document captured by the units of the Polish Army in the building of the SD at Mogilno (Poland) and presented to the Tribunal by the Soviet Prosecution is characteristic.

In this letter, addressed to the agents of the SD, the chief of the Blockstelle, some Hauptsturmführer of the SS, informs them of Himmler's speech of 15 March 1940 in which the latter instructed the commanders of the concentration camps situated in Poland first to make use of the Polish skilled workers for military industry in the concentration camps, and later to exterminate all those Poles. This Hauptsturmführer of the SS from Mogilno requested therefore all his trusted agents of the SD to prepare the lists of the Poles they considered as dangerous in order to exterminate them later on.

The SD was one of the most important links in the inhuman police machinery of the SS and German Fascism. It was a detective and information organization spread over the whole territory of the "old Reich," as well as throughout all the temporarily occupied territories and states. At a certain time it was the members of the SD who initiated the most cruel police measures of the Hitlerites.

For this reason, the Soviet Prosecution, supported by irrefutable evidence, considers that the whole system of the SD should be declared criminal.

In the course of the present Trial, there have been many attempts on the part of several of the defendants, the Defense, and those witnesses for the Defense who were generals in Hitlerite Germany, to represent both the High Command of the Armed Forces and the General Staff as organizations whose activities were guided by the sole principle of "fulfilling their soldierly duty."

The higher echelons of the German war machine, according to this concept, were far removed from the criminal politics of the Hitler Government, took no part in political decisions and confined themselves entirely to the fulfilment of orders emanating from their commander-in-chief and dealing with purely military matters. Opinion was expressed to the effect that the German General Staff, in view of the nature of the military structure then existing in Hitlerite Germany, was no more and no less than an auxiliary organization dealing with purely technical matters. Finally, attempts were made more than once, which is also quite understandable, to represent the High Command of the Army as something quite distinct and not having anything in common with the activity of the German police organization and of the SS.

Almost every student of European politics since the first World War knows that the generals and officers of the Kaiser's army were only too ready to play again the game they had once lost. For the German military defeat they blamed everything and everybody—except themselves. Meanwhile they worked on creating undercover military organizations, dreamed of revenge, and appeared prepared to offer their honor and their swords to any political adventurer who would not stop until another world war had been started. Surrounded by this type of new "tradition" there grew up in Germany the present generation of officers. And it was not by accident that the future leader of this generation, Adolf Hitler, entered the political arena out of the void with the moral and financial support of the Reichswehr. With few exceptions, it was the military caste that gave Hitler support, and when he seized power, rearmament began almost immediately. The haughty Prussian generals bowed to Hitler the corporal, because they knew that Hitler meant war.

Field Marshals Brauchitsch, Milch, Manstein, and others arrived here under Allied guard to give false testimony about themselves to the International Military Tribunal. And so we saw the peculiar spectacle of wolves turning into sheep!

I do not know just what kind of naive people they expected to find here, Brauchitsch particularly, when he presented himself here as a confirmed pacifist. If we allow ourselves to believe him, we would then also have to believe that he, the Commander-in-Chief of the German Army, knew nothing whatever of Germany's

aggressive plans, nothing of the coming invasions of Austria and Czechoslovakia, but was persistently and continuously persuading Hitler not to fight. Such a clumsy defense leads merely to self-betrayal. I beg to dwell briefly on evidence to refute the tricks and maneuvers of the Defense whose main aim has been to mask and diminish the extent of the criminal activity of the German High Command.

Evidence submitted to the Tribunal proves beyond doubt that both the General Staff and the OKW were fully informed of the criminal intentions of aggression on the part of the Hitlerite Government, that they shared these plans and participated actively in both their preparation and their realization. As soon as Hitler's *Mein Kampf* appeared, the aggressive anti-social plans of the Hitler conspirators became known to every German. They were widely propagated and made public from day to day and month to month. These plans received immediate recognition from the German military leaders, who subsequently put both their experience and their knowledge at the service of the Hitlerite State.

I do not plan, however, to delve deeply into the history of the Hitlerite State and its military machine to prove just when and how the subsequent criminal activity of the leading German military organs began. I want to mention only that evidence which refers to the beginning of the war.

Already on 23 May 1939, at a staff meeting held in the new Reich Chancellery, Hitler said to his chief military leaders:

> "Danzig is not the crux of the matter. For us it is a question of the expansion of our 'Lebensraum' in the East. Thus the question of whether Poland is to be spared disappears and there remains only the decision to attack Poland at the first suitable opportunity."

While expounding his military and political plans to his senior officers and generals at a staff meeting on 22 August 1939, at Obersalzberg, Hitler stated:

> "First of all comes the annihilation of Poland. Even if war breaks out in the West, the destruction of Poland still takes first place. For propaganda purposes I shall give out some excuse for beginning the war; whether it is true or not is unimportant."

At a conference of the commanders-in-chief, which took place on 23 November 1939, Hitler said the following in talking to his closest military advisers:

> "In principle I did not organize the Wehrmacht in order not to strike. The decision to strike was always with me. Earlier

or later I wanted to solve the problem. Through force of circumstances it was decided that for the moment the East was to be the object of attack."

Is this not evidence that Hitler made no secret of his criminal plans, so far as his chief military officers were concerned?

Even more convincing in this respect are the operational papers of the German High Command, which quite cynically describe the criminal aims of aggression on the part of the Hitler Government. In Hitler's directive of 30 May 1938, dealing with the execution of the plan "Grün" for the invasion of Czechoslovakia, it is stated:

"It is my unalterable decision to destroy Czechoslovakia by military action in the near future.

"From a military as well as a political standpoint the most favorable course is lightning-swift action on the grounds of an incident by which Germany is provoked in an unbearable way and which at least part of world opinion will consider as the moral justification for military action."

Or there is also the directive of 27 March 1941 regarding the invasion of Yugoslavia, which provides that:

"Without waiting for any declaration of Yugoslavia's loyalty to us, we must make all preparations to destroy Yugoslavia militarily and as a state."

This cynical frankness reaches a climax in the German operational material dealing with plans for attacking the Soviet Union. In the directive of the OKW of 13 March 1941 with regard to "special regions," long before the attack on the Soviet Union, it was stated:

"The Russian territory occupied in the course of operations shall, as soon as the conclusion of military action permits it, be divided up into individual states with governments of their own, according to special orders."

In the instructions for propaganda in the "Barbarossa" region published by the OKW in June 1941, it was foreseen that "for the time being no propaganda should be conducted for the dismemberment of the Soviet Union."

Finally, Document Number 21, dated 18 December 1940, known under the code name of "Plan Barbarossa," stated: "The final aim of the operation is to form a screen against Asiatic Russia along the general Archangel-Volga line."

The former Field Marshal of the German Army, Friedrich Paulus, gave the Tribunal an exhaustive explanation of this "final aim" pursued by Hitlerite Germany in its war against the Soviet Union, which was known to the entire High Command of the Armed Forces.

No less convincing evidence on this matter was given to the Tribunal by my American colleague, who presented an order of Field Marshal Von Manstein, former commander-in-chief of the 11th German Army. In this order, Von Manstein, giving an account of the political aims of the war against the Soviet Union in accordance with Hitler's instructions, informs his subordinates in an unequivocal manner that the aim of the attack on the Soviet Union is the destruction of the political system of its government.

It is strange therefore to hear now the statement of the Hitlerite General Von Manstein that he was only a soldier who was not informed of the policy of Hitler's Government. This order not only shows that the generals were acquainted with the political aims of the war, but also that they approved them. And it could not be otherwise. What could Hitler and his clique have done if the military specialists, the generals of the German Army, did not approve of his plans?

There existed a specific structure in the military apparatus in Hitlerite Germany. The OKW functioned simultaneously with the General Staff of the Army, as well as the staffs of the Air Forces and the Navy. The staffs of individual services worked out such parts of the general aggressive plans of Hitlerite Germany as were in the sphere of their competency, and the OKW co-ordinated and combined this work. Inasmuch as the decisive part of the realization of the aggressive plan lay with the Army with its numerous and powerful armored forces, the outstanding position in the preparation of the aggressive measures of the Hitlerite Government was naturally held by the German General Staff.

Therefore, the existing structure of the military apparatus of Germany by no means excluded, but on the contrary foresaw, in the elaboration, preparation, and execution of the criminal aggressive plans of the Hitlerite Government, a most active role for the General Staff. In order to characterize the practical role of the German General Staff in the elaboration and preparation of the aggressive plans of Germany, I shall refer to some facts; I shall quote again the statement of Field Marshal Friedrich Paulus, which he confirmed in this Tribunal. Paulus stated:

> "When on 3 September 1940 I took office in the OKH, among other plans I found there a still uncompleted preliminary plan for the attack on the Soviet Union, known under the code name of 'Barbarossa.'
>
> "The working-out of the preliminary 'Barbarossa' plan began in August 1940 and ended by the holding of two military maneuvers (Kriegsspiele) under my command at the Headquarters of the OKH at Zossen."

Is it not clear now to anyone that the German General Staff, as well as the OKW, were the creators of the criminal "Barbarossa" plan?

Equally active was the part of the German General Staff in the preparation of other aggressive plans of Hitlerite Germany.

There can be no doubt that in the elaboration of the criminal aggressive plans, the German General Staff, as well as the OKW, played a decisive part.

The German Armed Forces and their military leaders perpetrated, independently or in co-operation with the German police agencies, innumerable crimes in the occupied territories.

A simple enumeration of documentary evidence disclosing crimes perpetrated by the German Fascist usurpers in the occupied territories would take too much time. Therefore I shall refer only to separate evidence which proves that the military crimes and crimes against humanity were systematically perpetrated by the German Armed Forces on a mass scale, and were organized beforehand, involving all ranks of the German war machine—from Field Marshal to private.

It would be sufficient to recall the regulation of the Defendant Keitel of 13 May 1941 concerning "the application of martial law in the 'Barbarossa' region and the special measures for the troops," in which mention is made of applying "the most drastic measures," for the purpose of which the German officers had the right to execute without trial, and impunity was given for crimes committed by German military personnel against the peaceful population; or the regulation of the same Defendant Keitel of 16 September 1941, by which he ordered the German troops "to bear in mind that in the countries concerned human life has absolutely no value, and that intimidating action is only effective through the use of unusual cruelty."

The orders of the OKW may also be recalled concerning the extermination of Soviet commissars taken as prisoners of war, the branding of Soviet prisoners of war, as well as the orders of the Defendant Göring regarding the extermination of captured Allied pilots, the plundering of occupied territories and the deportation of the peaceful population to slavery in Germany; the order of the Defendant Dönitz forbidding the rescue of men from sinking vessels, the order of the former Field Marshal Reichenau on the conduct of troops in the East, and many others.

All these orders have now acquired a common meaning. These criminal orders did not, as some of the witnesses, such as Von Brauchitsch and Von Manstein, tried to establish here, remain only on paper. They were enforced with German thoroughness.

The Tribunal has listened to the testimony of the witness, the former Major General of the Medical Service of the German Army, Walter Schreiber. Schreiber, who is a bacteriological specialist, told us of the plans of the Hitlerite conspirators to use the death-dealing plague bacillus as a weapon in the war. He informed us how this crime, inspired by the German High Command, the General Staff, and the Defendants Hermann Göring and Wilhelm Keitel, was conceived and realized. Only the advance of the Red Army troops towards the frontiers of Germany stopped this criminal plan of the Hitlerite clique, the realization of which would have threatened the whole of Europe with new and dire calamities and devastation.

And it was not without purpose that special attention was given to the establishment of a connection between the military apparatus of Hitlerite Germany and other German State organizations. The OKW was represented in many German ministries by so-called liaison officers, and at the same time many ministries had their representatives in the OKW. Such a connection existed especially in the activities of the German military and civil authorities in the occupied territories. When confronted with the proofs, the Hitlerite military leaders are obliged to acknowledge their connection, for instance, with the Minister of Foreign Affairs or the Ministry for the Occupied Eastern Territories, but they flatly refuse to admit their connection with the German State Police and the SS. This is easy to conceive. The fact alone of such a connection would disclose their participation in numerous crimes in the occupied territories.

Therefore I consider myself obliged to prove the existence of a connection between the German military command and the German Secret State Police and other police agencies. This connection arose long before the attack on the Soviet Union by Hitlerite Germany.

In the instruction on "special regions" issued by the OKW on 13 March 1941 and signed by the Defendant Keitel, the necessity was foreseen of co-ordinating the activities of the Reichsführer SS and the OKW in the occupied territories. The witnesses Walter Schellenberg and Otto Ohlendorf, former section chiefs with the Reich Security Main Office, stated in their evidence at this Trial that already in May 1941, in execution of instructions from the OKW, an agreement was concluded between Quartermaster-General Wagner, representative of the OKH, and Heydrich, Chief of the Security Police and the SD, concerning the organization and work regulations for special Einsatzgruppen of the Security Police and the SD. During his cross-examination the witness Von Brauchitsch confirmed that he knew of such talks between Wagner and Heydrich.

The presence and character of the activity of the Security Police Einsatzgruppen and of the SD in the German Armed Forces is confirmed by evidence from several documents.

In a report of 15 October 1941 from Einsatzgruppe "A" of the Security Police and the SD it is stated:

"Our task now is to establish with all speed personal contact with the commanders and the commander-in-chief of the armies of the rear area. It must be stressed from the beginning that co-operation with the Armed Forces was generally good; in some cases, for instance with Panzer-Group 4 under Generaloberst Hoeppner, it was very close, almost cordial."

And further:

"At the start of the Eastern campaign it became obvious with regard to the Security Police that its special work had to be done not only in the rear areas, but also in the areas of the front."

From a letter of November 1941 by the Commissioner General for Bielorussia, the hangman Kube, in which even he expresses indignation at the criminal activities of the police in the town of Sluzk, it is apparent that the 2d Police Battalion, which shot masses of Jews in the town, was directly subordinated to the military command.

A trail of blood leads from the orders of Göring, Dönitz, Jodl, Keitel, from the criminal agreements of Wagner and Heydrich, from the orders of Reichenau and Manstein, to the innumerable crimes of the German troops and the Einsatzgruppen of the Security Police in the occupied territories. The blood of millions of innocent victims stains the hands not only of the German soldier Knittel and Obergefreiter Kurt, but also those of the Field Marshals of the German Army.

The Hitlerite war machine, headed by the High Command of the Wehrmacht and the German General Staff, was the decisive force with whose aid all the criminal aggressive plans of the Hitlerite Government, all the war crimes against humanity, were plotted and carried out. The German High Command and the German General Staff were therefore one of the most important organizations for the execution of the criminal conspiracy of the Hitlerite clique, and the higher military authorities of the German Armed Forces were active participants in this conspiracy.

As a result of the present proceedings I consider that the criminal character of this military organization is fully proved.

I pass on to the last of the organizations indicted as criminal—to the Reich Cabinet, which occupied a particularly prominent position in the system of Fascist dictatorship.

Appendix "C" to the Indictment includes a detailed enumeration of the personalities who made up the Government and who, for this

reason, are held responsible for the perpetration of the Hitlerite crimes as specified in Counts One, Two, Three, and Four of the Indictment.

In the course of 9 months the Tribunal has examined the evidence upon the monstrous crimes of the Nazis. We have heard here of the crimes of the Police and of the Wehrmacht, of the SS and of the Gestapo, of the Reich Protectors and of the Reich Commissioners in the occupied territories, of various Führer and Leiter. And we can most categorically declare that the homogeneity and the systematic organization of the crimes, the uniformity of the means and measures used to commit them, testify to the fact that these crimes were directed by and carried out through one single center. These innumerable and varied crimes can be traced back to the gang of Fascist conspirators and to the criminal Hitlerite Government.

Seen in this light, the declarations of the Defense and of the defendants to the effect that under Hitler the Council of Ministers was a mere technical apparatus deprived of any real power, are completely unconvincing. Actually not only did the ministers decide themselves all questions coming within their jurisdiction, but they were at the same time the executors of Hitler's will. It is also true that it was Hitler who made the final decision at all official and unofficial discussions and meetings. At the same time, however, one cannot forget the fact that not a single minister in any other government enjoyed such independence in deciding questions coming within his jurisdiction as did the ministers of the Hitlerite Government. Every single one of them was a Führer in his particular field, and by his advice, by the material presented, by drafts of laws and directives, wielded a most tangible influence over all decisions taken by Hitler in connection with questions concerning the sphere of activity of the different ministries. Then again, one cannot discount the fact that Hitler's will fully corresponded to the personal points of view and convictions of his ministers. They were necessary to Hitler just as much as he was necessary to them. Göring, Frick, Rosenberg, Neurath, Speer, Funk and others are inconceivable without Hitler, just as Hitler is inconceivable without them. Under Hitler's leadership they actively participated in the planning of the Fascist conspiracy, and every one of them, enacting the role allotted to him in the general criminal plan which defined the activity of literally all the departments, wittingly and actively carried out that plan.

As they were the leaders of all the corresponding central departments of Hitlerite Germany—of Finance, Economics, Justice, Communications, *et cetera*—they held in their hands, from 1933 to 1945, full legislative, executive, administrative, and political power. And they used this power in order to put into effect the criminal plans

for seizing foreign territories, for annihilating races and peoples, and for establishing a world domination. Moreover, in order to facilitate the execution of these criminal plans, they first of all seized the power over the German people and the German State, and supported this power by draconic measures.

The wave of Fascist terror swept over all of Germany even before Hitler's accession to power, and increased considerably after Hitler became Chancellor in 1933 and the Defendants Frick, Papen, and Von Neurath ministers in the Reich Government. Taking advantage of their presence in the Government, these Fascist ministers fully legalized the terror wrought by the SA of the Nazi Party and prepared the coming seizure of power, using, to achieve this aim, the burning-down of the Reichstag, which had been organized by the Defendant Göring.

Immediately after the seizure of power by the Fascists on 24 March 1933, a law was issued "concerning the Protection of the People and the State," giving legislative power to the Reich Government and by-passing the Reichstag.

On 26 May 1933 the Reich Government issued the decree for the confiscation of the property of the Communist organization, and starting from 14 July of the same year the property of the Social-Democrat organization was confiscated as well. On 1 December 1933 the criminal Reich Government published the law "To Ensure the Unity of the Party and the Government," which bore the signature of Hitler and of the Defendant Frick. Pursuing the liquidation of the democratic institutions, the Reich Government by virtue of the law "for the Reconstruction of the Reich" of 1934 cancelled all democratic elections for government and regional representative bodies. The Reichstag was changed by the Fascists into an institution devoid of any real meaning.

By virtue of the law of 7 April 1933 and others, all civil servants, amongst them judges, who had been at any time noticed as having anti-Fascist inclinations or who belonged to Leftist organizations, as well as all Jews, were dismissed from their offices and replaced by Fascists. According to the "basic principles of the German Civil Servants' Law" of 26 January 1937, the inner bond between the civil servant and the Party is taken for granted on his appointment to a post: "... the official shall fulfill the will of the National Socialist Government led by the NSDAP."

By making the government machinery in Germany completely Fascist, the Hitlerite conspirators were able to utilize it at a later period as an obedient tool for the perpetration of their criminal plans.

The Hitlerite Government introduced a number of measures designed to implant Fascist ideology and to mislead the people of

Germany. On 1 May 1934, the Ministry of Education was created. Its function was to educate youth in the spirit of militarism and racial hatred, and to give German youth a view of reality distorted by Fascist dreams. Similar tasks were allotted to the Reich Youth Leader and to those organizations which were subordinated to him. The principle of personal freedom and the freedom of the press and of speech were abolished. The free trade unions were abolished, their property confiscated, and the majority of their leaders thrown into prison. In order to supress by terror every kind of resistance, the Government founded the Gestapo and the concentration camps. Hundreds of thousands were arrested and destroyed without any trial or concrete evidence, merely on the suspicion of having anti-Fascist tendencies.

The Defense is attempting to prove that members of the Government did not participate in the issue of the shameful Nuremberg Laws and in racial discrimination against the Jews. Nevertheless there were special instructions in the Nuremberg Laws to two members of the Reichsregierung, namely, Hess and Frick, to elaborate and promulgate additional decrees implementing the laws. And such decrees were elaborated and promulgated by Hess and Frick. The same Frick, together with Funk, and acting on Göring's instructions, on 3 December 1938 issued a decree concerning "the liquidation of Jewish property," as well as a series of others.

In any state the government is usually fully responsible for all the laws promulgated during the period when that particular government was in power.

The Tribunal had an opportunity to analyze in detail the whole activity of the Hitlerite Government directed towards the preparation and initiation of aggression. It is not necessary to mention again the invasion of Austria and Czechoslovakia in 1938 and 1939, the attacks on Poland, Yugoslavia, and the Soviet Union. Numerous documents submitted to the Tribunal confirm the fact that the Hitlerite Government did everything possible to retain the invaded territories of France, Poland, Czechoslovakia, Yugoslavia, Norway, Poland, Belgium, and other countries, as well as the territories of the U.S.S.R. It is only because of the powerful blows of the Red Army and the armies of the Allies that it was impossible for the Fascist conspirators to realize their predatory plans. The activities of the Hitlerite Government had brought on the war which cost millions of human lives and caused incalculable losses and immeasurable suffering to other nations.

The Hitlerite Government is also responsible for all the war crimes and the crimes against humanity committed by the German troops and the German authorities during the war. The great amount of evidence submitted to the Tribunal proved clearly that

Hitlerite Germany prepared itself for the conduct of the most ruthless war in complete contempt of the laws and customs of war.

The war crimes and the crimes against humanity were committed not only against the soldiers of the peace-loving nations united against the Fascist aggressors, but also against the innocent civilian populations. Long before the treacherous aggression against the Soviet Union took place, the Government of Hitlerite Germany carefully laid plans for the monstrous extermination of the most highly cultured elements of the Soviet peoples.

The report published by the Extraordinary State Commission concerning the German Fascist atrocities in Novgorod, Stavropol, Orel, Stalino, Smolensk, Kiev, and other towns, has proved the existence of a carefully worked-out plan for the intended mass extermination by the German invaders of Soviet prisoners of war and Soviet civilians.

The defendants, members of the Hitlerite Government, have all hypocritically claimed that until the present Trial they never heard of the monstrous atrocities of the Hitlerites in the concentration camps, or of the savage behavior of the SS men and of the German authorities in the temporarily occupied territories. These claims are thoroughly false. Every German knew something of these facts. The radio stations of the whole world had broadcast them.

The revolting atrocities committed by the German authorities against the Soviet prisoners of war and the peaceful Soviet citizens were brought to the attention of the whole world in the official notes of the People's Commissar for Foreign Affairs of the U.S.S.R., V.M. Molotov, on 25 November 1941 and 27 April 1942. But in spite of the fact that the violation of the most elementary principles of international law and of human morality committed by the German Army and the German authorities were made known to the Reich Government by the above-mentioned documents, this criminal violation of the laws and customs of war continued also in 1943 and 1945. It is clear therefore that all these crimes were committed with full knowledge and on the direct instructions of the Hitlerite Government. Did not Rosenberg receive an official note from Lammers mentioning that the Geneva Convention was not valid for Soviet prisoners of war? Was not a circular of the Party Chancellery, signed by the Defendant Bormann and including instructions on the cruel treatment and mockery to be reserved for the Soviet prisoners of war, distributed to the ministers? Were not the Ministry of the Interior, the Reich Security Office, the Gestapo, the prisons and the concentration camps, offices and organizations of the German Government?

The Government must fully bear the responsibility for the atrocities committed by those Fascist Government organizations.

The members of Hitler's Government tried by every possible device to separate themselves from the SS men, but on being exposed, every one presented new versions—one more false than the other.

Rosenberg, Neurath, Frick, Ribbentrop, and other ministers were generals of the SS, and that this was no mere formality can be seen from the letter of the Defendant Ribbentrop to Himmler dated 22 July 1940, which was submitted to the Tribunal by the Soviet Prosecution.

Minister Rosenberg tried to make the Tribunal believe that he did not know anything about the bestial orders of Minister Himmler. Actually, on 7 September 1943 Himmler directed the Führer of the SS and SD to carry out, jointly with the military commanders, the complete destruction of the areas in Ukraine, and ordered that, and I quote:

> "Not a single human being, not a single head of cattle, not a hundredweight of grain, and not a railway line should remain; no house should remain standing, not a single mine should be available for years to come, no well which is not poisoned,"

and he recommended that special care be taken to inform the Reich Minister of the Eastern Occupied Territories, Rosenberg, of this order.

On 8 March 1940, Minister Göring sent to the highest authorities of the Reich a criminal directive concerning the treatment of civilian workers of Polish nationality in the Reich.

Minister Frank, as he repeatedly mentioned in his diary, received instructions from Göring to send hundreds of thousands of Poles for slavery into Germany.

The Ministers Speer, Sauckel, Rosenberg, Keitel, Funk, Seyss-Inquart, and others have been exposed during the Trial as having given directives and prepared measures for forced labor of prisoners of war and peaceful inhabitants of the territories seized by the Germans.

It was none other than Minister Rosenberg who approved the measure of Army Group "Center" concerning the seizure on Soviet territory of 40 to 50,000 children between the ages of 10 and 14 and their transfer to Germany. Do not these examples testify to the crimes committed by Hitler's Government?

It is established by documentary evidence that the carefully-organized plunder of the territories seized by the Germans was carried out in conformity with official directives and instructions of the Hitlerite Government and of its individual members. The directive of Minister Göring concerning the planned plunder of the occupied Soviet territories (the so-called "Göring Green File"), the

rapacious activities of the "Einsatzstab" and "special purpose units," the instructions of the Ministers Rosenberg and Ribbentrop concerning the plunder of cultural treasures and monuments of art, as well as the activities of the Ministers Funk and Speer, is not all this sufficient to conclude the participation of Hitler's Government in the plunder of the territories occupied by the Germans?

The Government of the German Reich is responsible, therefore, for the plunder of the public, private, and communal property, and for the destruction and looting of cultural treasures in the occupied territories. In the U.S.S.R. alone the material damages amount to 679,000,000,000 roubles.

The members of the Reich Government bear the responsibility for the forced Germanization of areas seized by the Germans. It was the Reich Ministers Göring, Frick, Hess, and Lammers who signed the decree incorporating into Germany the four western provinces of Poland.

It was none other than Frick who in his instruction to Gauleiter Rainer stated, and I quote:

> "... Your principal task will be to include in the German Reich the entire new areas of Southeast Carinthia and Upper Carniola ... for without the creation of a "German wall" in this region every administrative structure, good as it may be, will sooner or later fall.... Your task, Party Member Rainer, is to make this district entirely German again...."

To get a picture of this bandit Government it is sufficient for us to recall the agreement between the Ministers Ribbentrop and Himmler concerning the organization of the intelligence services abroad; the Himmler-Bormann agreement with Minister of Justice Thierack on 18 September 1942 concerning the special police measures for the extermination of Jews, Gypsies, Russians, Ukrainians, Poles, and Czechs who allegedly were anti-social elements; the letter of Minister Lammers of 4 June 1944 addressed to Minister Thierack regarding the impunity of those guilty of the murder of shot-down Allied airmen; the letter of Keitel to the Minister of Foreign Affairs concerning the treatment to be given to Allied airmen.

On 4 February 1938 Hitler formed a Secret Cabinet Council, indicating its purpose in these words: "I am establishing this Secret Cabinet Council to advise me on questions of foreign policy."

Hitler appointed Neurath as chairman of this Secret Cabinet Council, and Ribbentrop, Göring, Hess, Goebbels, Lammers, Brauchitsch, Raeder and Keitel as members. On 21 May 1938 Hitler created the Reich Defense Council. On 30 August 1939, Hitler reorganized the Reich Defense Council into the Council of Ministers for the Defense of the Reich. He appointed Göring chairman of this

council and the Ministers Hess, Frick, Funk, Keitel, and Lammers as members.

At the meeting of 23 November 1939 the chairman of this council, Göring, emphasized that "the Reich Defense Council is the deciding factor on questions concerning the preparation of war," and that "the Reich Defense Council will convene to take all the more important decisions."

It was not defense but aggression, the preparation for aggressive wars, which were the tasks of this council. In preparation for the war not only the members of the Reich Defense Council participated, but all other ministers as well. At the meeting of this council on 23 November 1939 there were present, together with Göring, Funk, Frick, Himmler, Keitel, and Lammers, the Ministers Schwerin von Krosigk, Dorpmüller, and others. At this session not only the utilization in the war industry of prisoners of war and the population of the occupied territories was discussed and planned, but the utilization of internees and even the number of internees in wartime were discussed as well.

In the minutes of this meeting it is stated:

> "The Plenipotentiary for Economy"—that is Funk—"will define the task which is to be executed by the prisoners of war as well as by the persons confined in prisons, concentration camps, *et cetera.*
>
> "According to information from the Reichsführer SS there will be a great number of people in the concentration camps during the war. According to preliminary data 20,000 prisoners will be employed in the concentration camp workshops."

Subjects discussed at the meeting also included directions on the collaboration of the OKW with the Plenipotentiary for Economy, of 3 May 1939, concerning plans for war economy and total warfare. There were also special reports from the Chief of Section V of the General Staff, Gehrke, and from the Minister of Transport, Dorpmüller.

Were all members of the Reich Government informed of these decisions? Certainly, and this is clear if only from the list of addresses to which the minutes of the meeting of 23 November 1939 were sent. The minutes of the meeting of the Reich Defense Council were sent to the Deputy of the Führer, to the Chief of the Reich Chancellery, to the President of the Secret Cabinet Council, to the Delegate for the Four Year Plan, and to the Ministers of Foreign Affairs, Justice, Interior, Education, Economics, Church and Religion, Food and Agriculture, Labor, Finance, Communications, Postal Services, the President of the Reichsbank, *et cetera.* The very fact that the majority of the members of the Reich Government

are defendants in the present Trial shows a great deal about the nature of the organization here discussed.

I consider, therefore, that the responsibility of the German Hitlerite Government for the grave crimes here mentioned is fully proven, and that the Reich Cabinet should therefore be declared a criminal organization.

Your Honors! In order to carry out their plotted crimes, the heads of the Fascist conspiracy created a system of criminal organizations which have been the subject of my statement here. Those who had made it their aim to dominate the world and to exterminate whole nations, are now awaiting with trepidation the coming verdict of the Court. This verdict does not only affect the defendants in the dock, the initiators of these cruel Fascist "ideas," the main organizers of the crimes of Hitlerism. Your verdict has to condemn the whole criminal system of German Fascism, that complicated and widely ramified network of Party, Government, SS, and military organizations which was the means of realizing the atrocious intentions of the chief conspirators.

On the battlefields mankind has already pronounced its verdict on German Fascism. The fire of the greatest battles known to the history of mankind, fought by the heroic Red Army and the valiant armies of the Allied Forces, has not only destroyed the hordes of the Hitlerites but it has given a new value to the sublime and noble principles of international co-operation, human morality, and the humane rules of social community.

The Prosecution have fulfilled their duty towards this Tribunal, towards the sacred memory of the innocent victims, towards the conscience of the nations, as well as towards their own.

May the Judgment of the Nations—severe but just—fall upon these Fascist hangmen.

THE PRESIDENT: The Tribunal will adjourn until 10:00 o'clock tomorrow morning.

[The Tribunal adjourned until 31 August 1946 at 1000 hours.]

TWO HUNDRED AND SIXTEENTH DAY

Saturday, 31 August 1946

Morning Session

THE PRESIDENT: Article 24 D (j) provides that each defendant may make a statement to the Tribunal. I therefore now call upon the defendants who wish—whether they wish to make statements. Defendant Hermann Wilhelm Göring.

HERMANN WILHELM GÖRING (Defendant): The Prosecution, in the final speeches, has treated the defendants and their testimony as completely worthless. The statements made under oath by the defendants were accepted as absolutely true when they could serve to support the Indictment, but conversely the statements were characterized as perjury when they refuted the Indictment. That is very elementary, but it is not a convincing basis for demonstration of proof.

The Prosecution uses the fact that I was the second man of the State as proof that I must have known everything that happened. But it does not present any documentary or other convincing proof in cases where I have denied under oath that I knew about certain things, much less desired them. Therefore, it is only an allegation and a conjecture when the Prosecution says, "Who should have known that if not Göring, who was the successor of the Führer?"

Repeatedly we have heard here how the worst crimes were veiled with the most secrecy. I wish to state expressly that I condemn these terrible mass murders to the utmost, and cannot understand them in the least. But I should like to state clearly once more before the High Tribunal, that I have never decreed the murder of a single individual at any time, and neither did I decree any other atrocities or tolerate them, while I had the power and the knowledge to prevent them.

The new allegation presented by Mr. Dodd in his final speech, that I had ordered Heydrich to kill the Jews, lacks every proof and is not true either. There is not a single order signed by me or signed in my behalf that enemy fliers should be shot or turned over to the SD. And not a single case has been established where units of my Luftwaffe carried out things like that.

The Prosecution has repeatedly submitted some documents which contain alleged statements, reported and written down at third and fourth hand, without my having previously seen these statements in order to correct erroneous ideas or to preclude misunderstandings.

How easily completely distorted reports can arise from third-hand notes is also proven, among other things, by the stenographic transcript of these court sessions, which often needed correction when checked.

The Prosecution brings forward individual statements over a period of 25 years, which were made under completely different circumstances and without any consequences arising from them at the time, and quotes them as proof of intent and guilt, statements which can easily be made in the excitement of the moment and of the atmosphere that prevailed at the time. There is probably not one leading personage on the opposing side who did not speak or write similarly in the course of a quarter of a century.

Out of all the happenings of these 25 years, from conferences, speeches, laws, actions, and decisions, the Prosecution proves that everything was desired and intended from the beginning according to a deliberate sequence and an unbroken connection. This is an erroneous conception which is entirely devoid of logic, and which will be rectified some day by history, after the proceedings here have proved the incorrectness of these allegations.

Mr. Jackson in his final speech points out the fact that the signatory states are still in a state of war with Germany, and that because of the unconditional surrender merely a state of truce prevails now. Now, international law is uniform. The same must apply to both sides. Therefore, if everything which is being done in Germany today on the part of the occupying powers is admissible under international law, then Germany was formerly in the same position, at least as regards France, Holland, Belgium, Norway, Yugoslavia and Greece. If today the Geneva Convention no longer has any validity so far as Germans are concerned, if today in all parts of Germany industry is being dismantled and other great assets in all spheres can be carried away to the other states, if today the property of millions of Germans is being confiscated and many other serious infringements on freedom and property are taking place, then measures such as those taken by Germany in the countries mentioned above cannot have been criminal according to international law either.

Mr. Jackson stated further that one cannot accuse and punish a state, but rather that one must hold the leaders responsible. One seems to forget that Germany was a sovereign state, and that her legislation within the German nation was not subject to the jurisdiction of foreign countries. No state ever gave notice to the Reich

at the proper time, pointing out that any activity for National Socialism would be made subject to punishment and persecution. On the other hand, if we, the leaders as individuals, are called to account and condemned—very well; but you cannot punish the German people at the same time. The German people placed their trust in the Führer, and under his authoritarian government they had no influence on events. Without knowledge of the grave crimes which have become known today, the people, loyal, self-sacrificing, and courageous, fought and suffered through the life-and-death struggle which had broken out against their will. The German people are free of guilt.

I did not want a war, nor did I bring it about. I did everything to prevent it by negotiations. After it had broken out, I did everything to assure victory. Since the three greatest powers on earth, together with many other nations, were fighting against us, we finally succumbed to their tremendous superiority.

I stand up for the things that I have done, but I deny most emphatically that my actions were dictated by the desire to subjugate foreign peoples by wars, to murder them, to rob them, or to enslave them, or to commit atrocities or crimes.

The only motive which guided me was my ardent love for my people, its happiness, its freedom, and its life. And for this I call on the Almighty and my German people to witness.

THE PRESIDENT: I call on the Defendant Rudolf Hess.

RUDOLF HESS (Defendant): First of all, I should like to make a request to the High Tribunal that I may remain seated because of my state of health.

THE PRESIDENT: Certainly.

HESS: Some of my comrades here can confirm the fact that at the beginning of the proceedings I predicted the following:

(1) That witnesses would appear who, under oath, would make untrue statements while, at the same time, these witnesses could create an absolutely reliable impression and enjoy the best possible reputation.

(2) That it was to be reckoned with that the Court would receive affidavits containing untrue statements.

(3) That the defendants would be astonished and surprised at some German witnesses.

(4) That some of the defendants would act rather strangely: they would make shameless utterances about the Führer; they would incriminate their own people; they would partially incriminate each other, and falsely at that. Perhaps they would even incriminate themselves, and also wrongly.

All of these predictions have come true, and as far as the witnesses and affidavits are concerned, in dozens of cases; cases in which the unequivocal oath of the defendants stands in opposition to the sworn statements of the former.

In this connection I shall only mention the name Messersmith: Mr. Messersmith, who, for example, says that he spoke to Admiral Dönitz at a time when the latter was, to my knowledge, in the Pacific Ocean or the Indian Ocean.

I made these predictions, however, not only here at the beginning of the Trial, but had already made them months before the beginning of the Trial in England to, among others, Dr. Johnston, the physician who was with me in Abergavenny.

At the same time I put these statements down in writing, as proof. I base my predictions on some events in countries outside of Germany. In this connection I should like to emphasize now that, while I mention these incidents, I was convinced from the beginning that the governments concerned knew nothing about them. Therefore, I am not raising any accusation against these governments.

In the years 1936 to 1938 political trials were taking place in one of these countries. These were characterized by the fact that the defendants accused themselves in an astonishing way. For example, they cited great numbers of crimes which they had committed or which they claimed to have committed. At the end, when death sentences were passed upon them, they clapped in frenzied approval to the astonishment of the world.

But some foreign press correspondents reported that one had the impression that these defendants, through some means hitherto unknown, had been put into an abnormal state of mind, as a result of which they acted the way they did.

These incidents were recalled to my mind by a certain happening in England. There it was not possible for me to get the reports of the trials at that time, any more than here. However, the corresponding years of the *Völkischer Beobachter* were at my disposal there. While looking through these numbers I came upon the following passage in the number of 8 March 1938. A report from Paris dated 7 March 1938 reads as follows:

> "The big Paris newspaper *Le Jour* made revelations about the means which were apparently used in these trials. These are rather mysterious means."

I quote literally what the *Völkischer Beobachter* reprinted from *Le Jour:*

> "These means make it possible for the selected victims to be made to act and speak according to the orders given them."

I emphasize and point out that this report in *Le Jour* not only says "to make them speak according to orders given them," but also "to make them act according to orders given them." The latter point is of tremendous importance in connection with the actions, the hitherto inexplicable actions of the personnel in the German concentration camps, including the scientists and physicians who made these frightful and atrocious experiments on the prisoners, actions which normal human beings, especially physicians and scientists, could not possibly carry out.

But this is also of equally great significance in connection with the actions of the persons who undoubtedly gave the orders and directions for the atrocities in the concentration camps and who gave the orders for shooting prisoners of war and lynchings and other such things, up to the Führer himself.

I recall that the witness Field Marshal Milch testified here that he had the impression that the Führer was not normal mentally during the last years, and a number of my comrades here have told me, independently of each other and without having any knowledge of what I am saying here now, that during the last years the Führer's eyes and facial expression had something cruel in them, and even had a tendency towards madness. I can name the comrades in question as witnesses.

I said before that a certain incident in England caused me to think of the reports of the earlier trials. The reason was that the people around me during my imprisonment acted towards me in a peculiar and incomprehensible way, in a way which led me to conclude that these people somehow were acting in an abnormal state of mind. Some of them—these persons and people around me were changed from time to time. Some of the new ones who came to me in place of those who had been changed had strange eyes. They were glassy and like eyes in a dream. This symptom, however, lasted only a few days and then they made a completely normal impression. They could no longer be distinguished from normal human beings. Not only I alone noticed these strange eyes, but also the physician who attended me at the time, Dr. Johnston, a British Army doctor, a Scotsman.

In the spring of 1942 I had a visitor, a visitor who quite obviously tried to provoke me and acted towards me in a strange way. This visitor also had these strange eyes. Afterwards, Dr. Johnston asked me what I thought of this visitor. He told me—I told him I had the impression that for some reason or other he was not completely normal mentally, whereupon Dr. Johnston did not protest, as I had expected, but agreed with me and asked me whether I had not noticed those strange eyes, these eyes with a dreamy look. Dr. Johnston did not suspect that he himself had exactly the same eyes when he came to me.

The essential point, however, is that in one of the reports of the time, which must still be in the press files on the proceedings—this was in Paris, about the Moscow trial—it said that the defendants had had strange eyes. They had had glazed and dreamy eyes! I have already said that I am convinced that the governments here concerned knew nothing of these happenings. Therefore it would not be in the interest of the British Government either if my statements about what I experienced during my imprisonment were denied publicity in any way, for that would give the impression that something was actually supposed to be concealed here, and that the British Government had actually had a finger in the pie.

On the contrary, however, I am convinced that both the Churchill Government and the present Government gave instructions that I was to be treated fairly and according to the rules of the Geneva Convention. I am conscious of the fact that what I have to say about the treatment which I received will at first glance appear incredible. Fortunately for me, however, prison guards at a very much earlier time had already treated their prisoners in a way which at first appeared absolutely incredible when the first rumors about it reached the outside world. These rumors were to the effect that prisoners had been deliberately allowed to starve to death, that ground glass, among other things, had been put in the meager food which had been given them, that the physicians who attended the prisoners who had been taken sick in this way had added harmful substances to their medicine, which increased their sufferings and at the same time increased the number of victims. As a matter of fact, all of these rumors afterwards proved to be true. It is a historical fact that a monument was erected for 26,370 Boer women and children who died in British concentration camps, and who for the most part died of hunger. Many Englishmen at that time, among others, Lloyd George, protested strongly against these happenings in British concentration camps, and likewise an English eye witness, Miss Emily Hopfords.

However, at that time the world was confronted with an insoluble riddle, the same riddle which confronts it today with regard to the happenings in the German concentration camps.

At that time the English people were confronted with an incomprehensible riddle, the same riddle which today confronts the German people with regard to the happenings in the German concentration camps. Indeed, at that time, the British Government itself was confronted with a riddle regarding the happenings in the South African concentration camps, with the same riddle which today confronts the members of the Reich Cabinet and the other defendants, here and in other trials, regarding the happenings in the German concentration camps.

Obviously, it would have been of the utmost importance if I had stated under oath what I have to say about the happenings during my own imprisonment in England. However, it was impossible for me to persuade my counsel to declare himself willing to put the proper questions to me. It was likewise impossible for me to get another counsel to agree to put these questions to me. But it is of the utmost importance that what I am saying be said under oath. Therefore I now declare once more: I swear by God the Almighty and Omniscient, that I will speak the pure truth, that I shall leave out nothing and add nothing. I ask the High Tribunal, therefore, to consider everything which I shall say from now on as under oath. Concerning my oath, I should also like to say that I am not a churchgoer; I have no spiritual relationship with the Church, but I am a deeply religious person. I am convinced that my belief in God is stronger than that of most other people. I ask the High Tribunal to give all the more weight to everything which I declare under oath, expressly calling God as my witness.

In the spring of 1942 . . .

THE PRESIDENT *[Interposing]:* I must draw the attention of the Defendant Hess to the fact that he has already spoken for 20 minutes, and the Tribunal has indicated to the defendants that it cannot allow them to continue to make statements of great length at this stage of the proceedings.

We have to hear all the defendants. The Tribunal, therefore, hopes that the Defendant Hess will conclude his speech.

HESS: Mr. President, may I point out that I was taking into account the fact that I am the only defendant who, up to now, has not been able to make a statement here. For what I have to say here, I could only have said as a witness if the proper questions had been put to me. But as I have already stated . . .

THE PRESIDENT: I do not propose to argue with the defendants. The Tribunal has made its order that the defendants shall only make short statements. The Defendant Hess had full opportunity to go into the witness box and give his evidence upon oath. He chose not to do so. He is now making a statement, and he will be treated like the other defendants and will be confined to a short statement.

HESS: Therefore, Mr. President, I shall forego making the statements which I had wanted to make in connection with the things I have just said. I ask you to listen to only a few more concluding words, which are of a more general nature and have nothing to do with the things that I have just stated.

The statements which my counsel made in my name before the High Tribunal I permitted to be made for the sake of the future

judgment of my people and of history. That is the only thing which matters to me. I do not defend myself against accusers to whom I deny the right to bring charges against me and my fellow-countrymen. I will not discuss accusations which concern things which are purely German matters and therefore of no concern to foreigners. I raise no protest against statements which are aimed at attacking my honor, the honor of the German people. I consider such slanderous attacks by the enemy as a proof of honor.

I was permitted to work for many years of my life under the greatest son whom my people has brought forth in its thousand-year history. Even if I could, I would not want to erase this period of time from my existence. I am happy to know that I have done my duty to my people, my duty as a German, as a National Socialist, as a loyal follower of my Führer. I do not regret anything.

If I were to begin all over again, I would act just as I have acted, even if I knew that in the end I should meet a fiery death at the stake. No matter what human beings may do, I shall some day stand before the judgment seat of the Eternal. I shall answer to Him, and I know He will judge me innocent.

THE PRESIDENT: I call upon the Defendant Joachim von Ribbentrop.

JOACHIM VON RIBBENTROP (Defendant): This Trial was to be conducted for the purpose of discovering the historical truth. From the point of view of German foreign policy I can only say:

This Trial will go down in history as a model example of how, while appealing to hitherto unknown legal formulas and the spirit of fairness, one can evade the cardinal problems of 25 years of the gravest human history.

If the roots of our trouble lie in the Treaty of Versailles—and they do lie there—was it really to the purpose to prevent a discussion about a treaty which the intelligent men even among its authors had characterized as the source of future trouble, while the wisest were already predicting from which of the faults of Versailles a new world war would arise?

I have devoted more than twenty years of my life to the elimination of this evil, with the result that foreign statesmen who know about this today write in their affidavits that they did not believe me. They ought to have written that in the interests of their own country they were not prepared to believe me. I am held responsible for the conduct of a foreign policy which was determined by another. I knew only this much of it, that it never concerned itself with plans of a world domination, but rather, for example, with the elimination of the consequences of Versailles and with the food problems of the German people.

If I deny that this German foreign policy planned and prepared for a war of aggression, that is not an excuse on my part. The truth of this is proved by the strength that we developed in the course of the second World War and the fact how weak we were at the beginning of this war.

History will believe us when I say that we would have prepared a war of aggression immeasurably better if we had actually intended one. What we intended was to look after our elementary necessities of life, in the same way that England looked after her own interests in order to make one-fifth of the world subject to her, and in the same way that the United States brought an entire continent and Russia brought the largest inland territory of the world under their hegemony. The only difference between the policies of these countries as compared with ours is that we demanded parcels of land such as Danzig and the Corridor which were taken from us against all rights, whereas the other powers are accustomed to thinking only in terms of continents.

Before the establishment of the Charter of this Tribunal, even the signatory powers of the London Agreement must have had different views about international law and policy than they have today. When I went to see Marshal Stalin in Moscow in 1939, he did not discuss with me the possibility of a peaceful settlement of the German-Polish conflict within the framework of the Kellogg-Briand Pact; but rather he hinted that if in addition to half of Poland and the Baltic countries he did not receive Lithuania and the harbor of Libau, I might as well return home.

In 1939 the waging of war was obviously not yet regarded as an international crime against peace, otherwise I could not explain Stalin's telegram at the conclusion of the Polish campaign, which read, I quote:

> "The friendship of Germany and the Soviet Union, based on the blood which they have shed together, has every prospect of being a firm and lasting one."

Here I should like to emphasize and stress the fact that even I ardently desired this friendship at that time. Of this friendship there remains today only the primary problem for Europe and the world: Will Asia dominate Europe, or will the Western Powers be able to stem or even push back the influence of the Soviets at the Elbe, at the Adriatic coast, and at the Dardanelles?

In other words, practically speaking: Great Britain and the United States today face the same dilemma as Germany faced at the time when I was carrying on negotiations with Russia. For my country's sake I hope with all my heart that they may be more successful in their results.

Now what has actually been proved in this Trial about the criminal character of German foreign policy? That out of more than 300 Defense documents which were submitted 150 were rejected without cogent reasons. That the files of the enemy, and even of the Germans, were inaccessible to the Defense. That Churchill's friendly hint to me that if Germany became too strong she would be destroyed, is declared irrelevant in judging the motives of German foreign policy before this forum. A revolution does not become more comprehensible if it is considered from the point of view of a conspiracy.

Fate made me one of the exponents of this revolution. I deplore the atrocious crimes which became known to me here and which besmirch this revolution. But I cannot measure all of them according to puritanical standards, and the less so since I have seen that even the enemy, in spite of their total victory, was neither able nor willing to prevent atrocities of the most extensive kind.

One can regard the theory of the conspiracy as one will, but from the point of view of the critical observer it is only a makeshift solution. Anybody who has held a decisive position in the Third Reich knows that it simply represents a historical falsehood, and the author of the Charter of this Tribunal has only proved with his invention from what background he derived his thinking.

I might just as well assert that the signatory powers of this Charter had formed a conspiracy for the suppression of the primary needs of a highly developed, capable, and courageous nation. When I look back upon my actions and my desires, then I can conclude only this: The only thing of which I consider myself guilty before my people—not before this Tribunal—is that my aspirations in foreign policy remained without success.

THE PRESIDENT: I call on the Defendant Wilhelm Keitel.

WILHELM KEITEL (Defendant): I acknowledged on the witness stand my responsibility in connection with my official position, and have explained the significance of this position in the presentation of evidence and in the final plea of my defense counsel.

It is far from my intention to minimize my part in what took place. In the interest of historical truth, however, it seems advisable to correct a few errors in the final speeches of the Prosecution.

The American chief prosecutor said in his final speech, and I quote: "Keitel, a weak, submissive tool, turned the Wehrmacht, the instrument of aggression, over to the Party."

A "turning-over" of the Wehrmacht to the Party by me cannot be reconciled with my functions, either up to 4 February 1938, or after that time, when Hitler made himself Supreme Commander of the Wehrmacht and thus ruled the Party and the Wehrmacht absolutely. I do not recall that any sort of evidence was presented in

the course of this Trial which could justify this serious allegation by the Prosecution.

The presentation of evidence, however, has also shown that the further contention "that Keitel led the Wehrmacht in the execution of its criminal intentions" is wrong. This allegation is in contradiction to the Anglo-American trial brief, which says expressly that I had no authority to issue orders.

Consequently, the British chief prosecutor is also mistaken when he speaks of me as—and I quote—"a Field Marshal who issued orders to the Wehrmacht." And when he claims that I said that I "had no idea what practical results were intended by this"—that is the quotation—I believe that this is something quite different from what I said on the witness stand, which was, and I quote the words I spoke on the witness stand: "But when an order was given, I acted according to my duty as I saw it, without permitting myself to be confused by the possible, but not always foreseeable, consequences." Also, the contention that—and I quote—"Keitel and Jodl cannot deny the responsibility for the operations of the Einsatzkommandos, with which their own commanders co-operated closely and cordially," cannot be reconciled with the results of the testimony. The OKW was eliminated from the Soviet Russian theater of war. There were no troop commanders under its orders.

The French chief prosecutor said in his final speech: "Is it necessary to recall the terrible words of the Defendant Keitel that 'human life was worth less than nothing in the occupied territories.' "

These terrible words are not my words. I did not think them up, and did not make them the contents of any order either. The fact that my name is connected with the transmission of this Führer order weighs heavily enough upon me.

At another point M. Champetier de Ribes says, and I quote:

> "This order was executed"—it concerned anti-Partisan activities—"by virtue of instructions from the commander of the army group, who in his turn acted according to general instructions of the Defendant Keitel."

Here again "instructions of Keitel" are mentioned, although the French Indictment itself states that I, as Chief of the OKW, could not give any direct orders to the branches of the Wehrmacht.

In the final speech of the Soviet Russian prosecutor he says, and I quote:

> "Beginning with the documents on the executions of political persons, Keitel, this 'soldier,' as he likes to call himself, lied shamelessly to the American Prosecution in the preliminary examination—disregarding his oath—by saying that this decree was in the nature of a reprisal and that political persons

had been kept separate from the other prisoners of war at the latter's own request. He was exposed before the Court."

The document in question is Number 884-PS.

The accusation that I lied is unfounded. The Soviet Russian Prosecution overlooked the fact that the transcript of my preliminary examination on this question was not a subject of evidence before this Tribunal. Therefore, its use in the final speech of the Prosecution should not have been allowed. I did not see the transcript of the preliminary interrogation and do not know the wording. If it is complete, it will clarify the error which arose because the document in question had not been shown to me. In the examination by my defense counsel on the witness stand I presented the state of affairs correctly.

In the last stage of the Trial, the Prosecution attempted once more to incriminate me severely by connecting my name with an order for the preparation of bacteriological warfare. A witness, the former Generalarzt Dr. Schreiber, had said in his report that:

"The chief of the OKW, Field Marshal Keitel, had issued orders to prepare for bacteriological warfare against the Soviet Union."

On the witness stand here, to be sure, this witness spoke of a "Führer order." But this is not true, either.

The introduction of the testimony of Colonel Bürker, which was approved by the Tribunal in agreement with the Prosecution, indicates that in the autumn of 1943, I, in Bürker's own words, sharply and categorically rejected the suggestion of the Army Medical Inspectorate and the Army Ordnance Branch to begin experiments with bacteria, with the comment that that was completely out of the question and that it was indeed forbidden. This is true. General Jodl also can confirm the fact that no order of the kind alleged by the witness was ever issued; on the contrary, Hitler prohibited bacteriological warfare, which had been suggested by some departments. This proves the allegation to the contrary by the witness Dr. Schreiber to be untrue.

I claim to have told the truth in all things, even if they incriminated me; at least to have endeavored, in spite of the great extent of my field of activity, to contribute to the clarification of the true state of affairs to the best of my knowledge.

Now, at the end of this Trial I want to present equally frankly the avowal and confession I have to make today.

In the course of the Trial my defense counsel submitted two fundamental questions to me, the first one already some months ago. It was: "In case of a victory, would you have refused to participate in any part of the success?"

I answered: "No, I should certainly have been proud of it."

The second question was: "How would you act if you were in the same position again?"

My answer: "Then I would rather choose death than to let myself be drawn into the net of such pernicious methods."

From these two answers the High Tribunal may see my viewpoint. I believed, but I erred, and I was not in a position to prevent what ought to have been prevented. That is my guilt.

It is tragic to have to realize that the best I had to give as a soldier, obedience and loyalty, was exploited for purposes which could not be recognized at the time, and that I did not see that there is a limit set even for a soldier's performance of his duty. That is my fate.

From the clear recognition of the causes, the pernicious methods, and the terrible consequences of this war, may there arise the hope for a new future in the community of nations for the German people.

THE PRESIDENT: I call upon the Defendant Ernst Kaltenbrunner.

ERNST KALTENBRUNNER (Defendant): The Prosecution holds me responsible for the concentration camps, for the destruction of Jewish life, for Einsatzgruppen and other things. All of this is neither in accord with the evidence nor with the truth. The accusers as well as the accused are exposed to the dangers of a summary proceeding.

It is correct that I had to take over the Reich Security Main Office. There was no guilt in that in itself. Such offices exist in governments of other nations too. However, the task and activity assigned to me in 1943 consisted almost exclusively in the reorganization of the German political and military intelligence service, though not as Heydrich's successor. Almost a year after his death I had to accept this post under orders and as an officer at a time when suspicion fell on Admiral Canaris of having collaborated with the enemy for years. In a short time I ascertained the treason of Canaris and his accomplices to the most frightful extent. Offices IV and V of the Reich Security Main Office were subordinate to me only theoretically, not in fact.

The chart shown here of the different groups and the chain of command leading from them is wrong and misleading. Himmler, who understood in a masterly way how the SS, which for a long time had ceased to form an organizational and ideological unit, could be split up into very small groups and brought under his immediate influence, so far as it served his purpose, together with Müller, the Chief of the Gestapo, committed the crimes which we

know about today. I emphatically and vehemently state that, contrary to public opinion, I learned only about a very small fraction of the activities of these offices, which were actually under Himmler and his accomplices, and only insofar as it concerned my own special work.

In the Jewish question I was just as much deceived as other high officials. I never approved or tolerated the biological extermination of Jewry. The anti-Semitism found in Party and State laws was still to be considered in time of war as an emergency defense measure. The anti-Semitism of Hitler, as we understand it today, was barbarism. I did not participate in either of these forms and maintain, as I shall show, that the discontinuance of the extermination of the Jews is to be traced to my influence on Hitler.

After the presentation of evidence several photographs were submitted which allegedly show my knowledge of crimes in concentration camps, the camp at Mauthausen, and my knowledge of the criminal tools which were used there. I never set foot in Camp Mauthausen, only that part of the labor camps where the stone quarry was located, where hardened criminals were employed according to law, but no Jews or political prisoners. The pictures show an administration building and nothing else. Affidavit USA-909, pictures 894 to 897-F, are therefore factually impossible and wrong. The picture with Hitler shows the visit to a building site in Linz, 35 kilometers away from Camp Mauthausen.

The statement of the witness Dr. Morgen seems essentially true, but it needs to be supplemented as far as my person and my reactions to this are concerned. In the emergency of his own arrest and defense the witness is too much concerned with himself and does not say that he was transferred by the chief of the Main Office SS Courts to Office V of the RSHA upon my request, so that as a juridical official he could supplement the special commission which was established there by the chief of the Criminal Police, Nebe, and myself for the investigation of the concentration camps. He cannot testify as to my knowledge of the subsequent events, as to what I—dumbfounded by his report, in contrast to Müller, who raged like one who had just been unmasked—did after reading his report. On the same day an exact written report was sent to Hitler at headquarters. Days later I was ordered to appear and flew there. After my long report Hitler agreed to an investigation of Himmler and Pohl. He declared a special court competent for all subsequent investigations and necessary measures. Pohl was to be dismissed from his office at once. In front of me Hitler gave orders to Fegelein, who was liaison officer for Himmler, that Himmler was to be called to him, and he promised me that he would take all possible measures that very day against any further misdeeds.

He refused my request to be released and sent to the front, pointing out that I was indispensable in the intelligence service. Eichmann was arrested and detained and reported to me; the decree by Himmler in October of 1944, which confirms and puts in final form that which I have just testified, is in its wording one of Himmler's last devilish actions.

Does not the Prosecution even now see any discrepancy in the fact that Amt V of the RSHA exposed the crimes of Amt IV of the RSHA and the secret criminal clique? In this I see the proof of the fact that I never knew what was really going on, and at the moment when I realized what was taking place, I protested in my own office.

Should I have shirked responsibility at that time by feigning illness, or was it my duty to fight with all my powers to have this unparalleled barbarity brought to a halt? That is the only thing to be decided here as my guilt.

The other defamations raised by the Prosecution against me do not alter that either. The letter written to the Mayor of Vienna, which seems to be so highly incriminating here and which I do not remember having signed, has been explained for me today.

All of the 12,000 people who at that time, together with tens of thousands of German men and women, were used to fortify the region east of Vienna, were, together with an additional 2,000 persons in Gunskirchen in Upper Austria, cared for by the International Red Cross through my mediation and led to freedom. The speed and excitement of the cross-examination did not permit me to recall that at the time when the commission of Amt V had long been active in the camps, I could no longer believe that there was any danger to Jewish life. My credibility has been doubted ever since then, but it would have been restored immediately if an enquiry had been made by the Prosecution with the International Red Cross at Geneva in proceedings which were not so summary.

If, however, I am asked: "Why did you remain even after you knew that your superiors were committing crimes?" I can answer only that I could not set myself up as their judge, and that indeed not even this Tribunal here will be in a position to ask for expiation of these crimes.

In the final days the Prosecution accused me of participating in the murder of a French general. I heard about the murder of a German, General Brodowski, and the order given by Hitler to investigate the question of reprisals. I heard about the murder for the first time a few days ago. Panzinger was chief of the War Investigation Division in the Reich Criminal Police Office and was subordinate to no one except Himmler in his capacity as chief of the Prisoner-of-War Organization and of the Replacement Army.

He was not, as the Prosecution maintains, an official of the Secret State Police.

Concerning the teletype message of 30 December 1944, signed with my name, in which the method of carrying out the plan was reported by Berlin to Himmler at the latter's headquarters, I should like to say that from 23 December until 3 January I was in Austria with my family and could not have seen and signed this teletype.

In November 1944 I was merely ordered to check the report of Reich Press Chief Dietrich on the murder of a German general in France. The results were sent to headquarters by the offices there.

I regretted the fact that Hitler, in a situation such as I found when I assumed office in 1943, did not have a better relation with the Church, which in every state makes for order and cannot be theorized away. My remonstrances had no effect. I made an honest effort, as the presentation of evidence has shown, but even from this the Prosecution has not drawn any conclusions.

I know only that in my belief in Adolf Hitler I put all my strength at the disposal of my people. As a German soldier I could only put myself at the service of the defense against those destructive forces which had once brought Germany close to the abyss, and which today, after the collapse of the Reich, are still threatening the world.

If I have made mistakes in my work through a false conception of obedience, if I carried out orders, all of which, insofar as they are alleged to be cardinal orders, were issued before my time of office, then they are part of a fate which is stronger than myself and which is carrying me along with it.

I am accused here because substitutes are needed for the missing Himmler and other elements which were completely contrary to me. Whether my point of view and explanation are accepted or rejected, I ask you not to connect the fate and honor of hundreds of thousands of the living and dead of the General SS, of the Waffen-SS, and of the civil servants who, believing in their ideal, bravely defended their Reich to the last, with your just curse against Himmler. Like myself, they believed that they were acting according to law.

THE PRESIDENT: The Tribunal will adjourn.

[A recess was taken.]

THE PRESIDENT: I call on the Defendant Alfred Rosenberg.

ALFRED ROSENBERG (Defendant): Besides repeating the old accusations, the prosecutors have raised new ones of the strongest kind; thus they claim that we all attended secret conferences in

order to plan a war of aggression. Besides that, we are supposed to have ordered the alleged murder of 12,000,000 people. All these accusations have been collectively described as "genocide"—the murder of peoples. In this connection I have the following to declare in summary.

I know my conscience to be completely free from any such guilt, from any complicity in the murder of peoples. Instead of working for the dissolution of the culture and national sentiment of the Eastern European nations, I attempted to improve the physical and spiritual conditions of their existence; instead of destroying their personal security and human dignity, I opposed with all my might, as has been proven, every policy of violent measures, and I rigorously demanded a just attitude on the part of the German officials and a humane treatment of the Eastern Workers. Instead of practising "child slavery," as it is called, I saw to it that young people from territories endangered by combat were granted protection and special care. Instead of exterminating religion, I reinstated the freedom of the Churches in the Eastern territories by a decree of tolerance.

In Germany, in pursuance of my ideological convictions, I demanded freedom of conscience, granted it to every opponent, and never instituted a persecution of religion.

The thought of a physical annihilation of Slavs and Jews, that is to say, the actual murder of entire peoples, has never entered my mind and I most certainly did not advocate it in any way. I was of the opinion that the existing Jewish question would have to be solved by the creation of a minority right, by emigration, or by settling the Jews in a national territory over a ten-year period of time. The *White Paper* of the British Government of 24 July 1946 shows how historical developments can bring about measures which were never previously planned.

The practice of the German State Leadership in the war, as proven here during the Trial, differed completely from my ideas. To an ever-increasing degree Adolf Hitler drew persons to himself who were not my comrades, but my opponents. With reference to their pernicious deeds I must state that they were not practising the National Socialism for which millions of believing men and women had fought, but rather, shamefully misusing it. It was a degeneration which I, too, very strongly condemned.

I frankly welcome the idea that a crime of genocide is to be outlawed by international agreement and placed under the severest penalties, with the natural provision that neither now nor in the future shall genocide be permitted in any way against the German people either.

Among other matters, the Soviet prosecutor stated that the entire so-called "ideological activity" had been a "preparation for crime." In that connection I should like to state the following: National Socialism represented the idea of overcoming the class struggle which was disintegrating the people, and uniting all classes in a large national community. Through the Labor Service, for instance, it restored the dignity of manual labor on mother earth, and directed the eyes of all Germans to the necessity of a strong peasantry. By the Winter Relief Work it created a comradely feeling among the entire nation for all fellow-citizens in need, irrespective of their former party membership. It built homes for mothers, youth hostels, and community clubs in factories, and acquainted millions with the yet unknown treasures of art.

For all that I served.

But along with my love for a free and strong Reich I never forgot my duty towards venerable Europe. In Rome, as early as 1932, I appealed for its preservation and peaceful development, and I fought as long as I could for the idea of internal gains for the peoples of Eastern Europe when I became Eastern Minister in 1941. Therefore in the hour of need I cannot renounce the idea of my life, the ideal of a socially peaceful Germany and a Europe conscious of its values, and I will remain true to it.

Honest service for this ideology, considering all human shortcomings, was not a conspiracy and my actions were never a crime, but I understood my struggle, just as the struggle of many thousands of my comrades, to be one conducted for the noblest idea, an idea which had been fought for under flying banners for over a hundred years.

I ask you to recognize this as the truth.

In that case no persecution of beliefs could arise from this Trial; then, in my conviction, a first step would be taken for a new, mutual understanding among nations, without prejudice, without ill-feeling, and without hatred.

THE PRESIDENT: I call upon the Defendant Hans Frank.

HANS FRANK (Defendant): Your Honors:

Adolf Hitler, the chief defendant, left no final statement to the German people and the world. Amid the deepest distress of his people he found no comforting word. He became silent and did not discharge his office as a leader, but went down into darkness, a suicide. Was it stubbornness, despair, or spite against God and man? Perhaps as though he thought: "If I must perish, then let the German people fall into the abyss also." Who will ever know?

We—and if I now use the term "we," then I mean myself and those National Socialists who will agree with me in this confession,

and not those fellow-defendants on whose behalf I am not entitled to speak—we do not wish to abandon the German nation to its fate in the same way without a word; we do not wish to say simply, "Now you will just have to see how you can get along with this collapse which we have left you." Even now, perhaps as never before, we still bear a tremendous spiritual responsibility.

At the beginning of our way we did not suspect that our turning away from God could have such disastrous deadly consequences and that we would necessarily become more and more deeply involved in guilt. At that time we could not have known that so much loyalty and willingness to sacrifice on the part of the German people could have been so badly directed by us.

Thus, by turning away from God, we were overthrown and had to perish. It was not because of technical deficiencies and unfortunate circumstances alone that we lost the war, nor was it misfortune and treason. Before all, God pronounced and executed judgment on Hitler and the system which we served with minds far from God. Therefore, may our people, too, be called back from the road on which Hitler—and we with him—have led them.

I beg of our people not to continue in this direction, be it even a single step; because Hitler's road was the way without God, the way of turning from Christ, and, in the last analysis, the way of political foolishness, the way of disaster, and the way of death. His path became more and more that of a frightful adventurer without conscience or honesty, as I know today at the end of this Trial.

We call upon the German people, whose rulers we were, to return from this road which, according to the law and justice of God, had to lead us and our system into disaster and which will lead everyone into disaster who tries to walk on it, or continue on it, everywhere in the whole world.

Over the graves of the millions of dead of this frightful second World War this state trial was conducted, lasting for many months, as a central, legal epilogue, and the spirits passed accusingly through this room.

I am grateful that I was given the opportunity to prepare a defense and justification against the accusations raised against me.

In this connection I am thinking of all the victims of the violence and horror of the dreadful events of war. Millions had to perish unquestioned and unheard. I surrendered my war diary, containing my statements and activities, in the hour when I lost my liberty. If I was really ever severe, then it was above all toward myself, at this moment when my actions in the war were made public.

I do not wish to leave any hidden guilt which I have not accounted for behind me in this world. I assumed responsibility on the

witness stand for all those things for which I must answer. I have also acknowledged that degree of guilt which attaches to me as a champion of Adolf Hitler, his movement, and his Reich.

I have nothing to add to the words of my defense counsel.

There is still one statement of mine which I must rectify. On the witness stand I said that a thousand years would not suffice to erase the guilt brought upon our people because of Hitler's conduct in this war. Every possible guilt incurred by our nation has already been completely wiped out today, not only by the conduct of our war-time enemies towards our nation and its soldiers, which has been carefully kept out of this Trial, but also by the tremendous mass crimes of the most frightful sort which—as I have now learned—have been and still are being committed against Germans by Russians, Poles, and Czechs, especially in East Prussia, Silesia, Pomerania, and Sudetenland. Who shall ever judge these crimes against the German people?

I end my final statement in the sure hope that from all the horrors of the war and all the threatening developments which are already appearing everywhere, a peace may perhaps still arise in whose blessings even our nation may be able to participate.

But it is God's eternal justice in which I hope our people will be secure and to which alone I trustfully submit.

THE PRESIDENT: I call upon the Defendant Wilhelm Frick.

WILHELM FRICK (Defendant): I have a clear conscience with respect to the Indictment. My entire life was spent in the service of my people and my fatherland. To them I have devoted the best of my strength in the loyal fulfilment of my duty.

I am convinced that no patriotic American or citizen of any other country would have acted differently in my place, if his country had been in the same position. For to have acted any differently would have been a breach of my oath of allegiance, and high treason.

In fulfilling my legal and moral duties, I believe that I have deserved punishment no more than have the tens of thousands of faithful German civil servants and officials in the public service who have already been detained in camps for over a year merely because they did their duty. I feel in duty and honor bound, as a former long-standing public minister, to remember them here in gratitude.

THE PRESIDENT: I call upon the Defendant Julius Streicher.

JULIUS STREICHER (Defendant): Your Honors:

At the beginning of this Trial I was asked by the President whether I pleaded guilty in the sense of the Indictment. I answered that question in the negative.

The completed proceedings and the evidence presented have confirmed the correctness of the statement I gave at that time.

It has been established that:

(1) Mass killings were carried out exclusively upon orders by the Head of the State, Adolf Hitler, without other influence.

(2) The mass killings were carried out without the knowledge of the German people and in complete secrecy by the Reichsführer SS, Heinrich Himmler.

The Prosecution had asserted that mass killings would not have been possible without Streicher and his *Stürmer.* The Prosecution neither offered nor submitted any proof of this assertion.

It is clearly established that on the occasion of the Anti-Jewish Boycott Day in 1933, which I was ordered to lead, and on the occasion of the demonstration of 1938 ordered by Reich Minister Dr. Goebbels, I, in my capacity as Gauleiter, neither ordered, demanded, nor participated in any acts of violence against Jews.

It is further established that in many articles in my weekly paper, the *Stürmer,* I advocated the Zionist demand for the creation of a Jewish state as the natural solution of the Jewish problem.

These facts prove that I did not want the Jewish problem to be solved by violence.

If I or other authors mentioned a destruction or extermination of Jewry in some article of my weekly paper, the *Stürmer,* then these were strong statements in reply to provoking expressions of opinion by Jewish authors in which the extermination of the German people was demanded. According to his last testament the mass killings ordered by the leader of the State, Adolf Hitler, were supposed to be a reprisal which was only brought about by the course of the war, then recognized as becoming unfavorable.

These actions of the leader of the State against the Jews can be explained by his attitude toward the Jewish question, which was thoroughly different from mine. Hitler wanted to punish the Jews because he held them responsible for unleashing the war and for the bombing of the German civilian population.

It is deeply regrettable that the mass killings, which can be traced back to the personal decision of the leader of the State, Adolf Hitler, have led to a treatment of the German people which must also be considered as not humane. I repudiate the mass killings which were carried out, in the same way as they are repudiated by every decent German.

Your Honors! Neither in my capacity as Gauleiter nor as political author have I committed a crime, and I therefore look forward to your judgment with a good conscience.

I have no request to make for myself. I have one for the German people from whom I come. Your Honors, fate has given you the power to pronounce any judgment. Do not pronounce a judgment, Your Honors, which would imprint the stamp of dishonor upon the forehead of an entire nation.

THE PRESIDENT: I call upon the Defendant Walter Funk.

WALTER FUNK (Defendant): In the days of my nation's greatest need I joined a political movement, the aim of which was the struggle for the freedom and honor of my fatherland and for a true social community of the people.

This movement received the leadership of the State in a legal way. I served this State by virtue of my duty as a civil servant engaged in the execution of the German laws. I felt myself to a high degree bound to perform this duty at a time when there was danger of war and during the war itself, when the existence of the fatherland was threatened in the extreme.

But in war the state is absolutely dependent on the loyalty and faithfulness of its officials.

Now, horrible crimes have become known here, in which the offices under my direction were partly involved.

I learned this here in court for the first time. I did not know of these crimes, and I could not have known them.

These criminal deeds fill me, like every German, with deep shame. I have examined my conscience and memory with the utmost care, and I have told the Court frankly and honestly everything that I knew and have concealed nothing. As far as the deposits of the SS in the Reichsbank are concerned, I only acted in performance of the official duties incumbent on me as President of the Reichsbank. According to law, the acceptance of gold and foreign currency was one of the business tasks of the Reichsbank. The fact that the confiscation of these assets was taking place through the SS agencies subordinate to Himmler could not arouse any suspicion in me. The entire police system, the border control, and especially the search for foreign currency in the Reich and in all occupied areas were under Himmler, but I was equally deceived and imposed upon by Himmler.

Until the time of this Trial, I did not know and did not suspect that among the assets delivered to the Reichsbank there were enormous quantities of pearls, precious stones, jewelry, gold objects, and even spectacle frames, and—horrible to say—gold teeth. That was never reported to me, and I never noticed it either. I never saw these things. But until this Trial I also knew nothing of the fact that millions of Jews were murdered in concentration camps or by the Einsatzkommandos in the East. Never did a single person say even one word to me about these things.

The existence of extermination camps of this kind was totally unknown to me. I did not know a single one of these names. I have never set foot in a concentration camp either.

I, too, assumed that some of the gold and foreign currency which was deposited in the Reichsbank came from concentration camps, and I frankly stated this fact from the beginning in all of my interrogations. But according to German law everyone was obliged to deliver these assets.

Apart from that, the kind and quantity of these shipments from the SS were never made known to me. But how was I even to suspect that the SS had acquired these assets by desecrating corpses?

If I had known of these horrible circumstances, my Reichsbank would never have accepted these assets for storage and conversion into money. I would have refused, even risking the danger that it might have cost me my head. If I had known of these crimes, Your Honors, I would not be sitting in the defendant's dock today, you may be convinced of that. In that case the grave would have been better for me than this tormented life, this life full of suspicions, slanders, and vulgar accusations.

Not a single human being has ever lost his life because of any measures decreed by me. I have always respected the property of others. I have always tried to help people in need and, as far as it lay within my power, to bring happiness and joy into their lives. And for that, many will be grateful to me and remain grateful.

Human life consists of error and guilt.

I, too, have made many mistakes; I, too, have let myself be deceived in many things and I frankly acknowledge, I admit, that I have let myself be deceived all too easily, and in many ways have been too unconcerned and too gullible. Therein I see my guilt, but I consider myself free from any criminal guilt which I am supposed to have incurred in discharging my official duties. In that respect, my conscience is just as clear today as on the day when I entered this courtroom 10 months ago for the first time.

THE PRESIDENT: I call upon the Defendant Hjalmar Schacht.

HJALMAR SCHACHT (Defendant): My sense of justice was deeply wounded by the fact that the final speeches of the Prosecution completely by-passed the evidence resulting from this Trial. The only accusation raised against me under the Charter is that I wanted war. The overwhelming evidence in my case has shown, however, that I was a fanatical opponent of war and tried actively and passively, by protests, sabotage, cunning, and force, to prevent the war.

How, then, can the Prosecution assert that I favored war? How can the Russian prosecutor assert that I did not turn from Hitler

until 1943, when my first attempt at a *coup d'état* had already been undertaken in the autumn of 1938?

And now Justice Jackson has raised a new accusation against me in his final speech, which has not been discussed at all in the Trial until now. I am said to have planned to release Jews from Germany in exchange for a ransom in foreign currency. This, too, is untrue. Disgusted by the Jewish pogrom of November 1938, I managed to obtain Hitler's approval to a plan which was to facilitate emigration for the Jews. I intended to place 1,500 million Reichsmarks taken from confiscated Jewish property under the administration of an international committee, and Germany was to undertake the obligation to repay this amount to the committee in 20 yearly instalments and in foreign currency, which is the exact opposite of what Justice Jackson asserted here.

I discussed this plan in December 1938 in London with Lord Berstedt of Samuel and Samuel, with Lord Winterton, and with the American representative, Mr. Rublee. They were all sympathetically disposed towards the plan. But since I was removed from the Reichsbank shortly afterwards by Hitler, the matter was dropped. Had it been carried through, not a single German Jew would have lost his life.

My opposition to Hitler's policies was known at home and abroad and was so clear that even in 1940 the United States Chargé d'Affaires, Mr. Kirk, sent me his regards before leaving his Berlin post, adding that after the war I could be counted on as a man free from guilt, which is reported in detail by the witness Hülse in his affidavit (37-b in my document book).

Instead of that, however, the Prosecution has branded me in the world press for a whole year as a robber, murderer, and betrayer. It is this accusation alone which I have to thank for the fact that in the evening of my life I am without means of subsistence and without a home. But the Prosecution are mistaken if they believe, as was mentioned in one of their first speeches, that they can count me amongst the pitiful and broken characters.

To be sure, I erred politically. I never claimed to be a politician, but my economic and financial policy of creating work by assisting credit proved brilliantly successful. The figure of unemployment dropped from 7,000,000 to zero. In the year 1938 the state revenues had risen to such an extent that the repayment of the Reichsbank credits was fully guaranteed. The fact that Hitler refused this repayment, which he had solemnly confirmed, was a tremendous fraud which I could not foresee. My political mistake was not realizing the extent of Hitler's criminal nature at an early enough time. But I did not stain my hands with one single illegal or immoral act. The terrorism of the Gestapo did not frighten me. For

terrorism must always fail before the appeal to conscience. In this lies the great source of strength which religion gives us.

In spite of that, Justice Jackson considered it proper to accuse me of opportunism and cowardice. And this when the end of the war found me in the Flossenbürg extermination camp, where I had been imprisoned for 10 months, and where I escaped Hitler's order of murder only by a merciful fate. At the conclusion of this Trial I stand shaken to the very depths of my soul by the unspeakable suffering which I tried to prevent with all my personal efforts and with all attainable means, but which in the end I failed to prevent—not through my fault.

Therefore, my head is upright and I am unshaken in the belief that the world will recover, not through the power of violence, but only through the strength of the spirit and morality of actions.

THE PRESIDENT: I call upon the Defendant Karl Dönitz.

KARL DÖNITZ (Defendant): I should like to say three things.

Firstly, you may judge the legality of German submarine warfare as your conscience dictates. I consider this form of warfare justified and have acted according to my conscience. I would have to do exactly the same all over again. My subordinates however, who carried out my orders, acted with complete confidence in me and without there being a shadow of a doubt about the necessity and legality of these orders. In my eyes no subsequent judgment can deprive them of their belief in the honorable character of a struggle for which they voluntarily made sacrifice after sacrifice up to the last hour.

Secondly, there has been much talk here about a conspiracy which is alleged to have existed among the defendants. I consider this allegation a political dogma. As such it cannot be proved, but can only be believed or rejected. Considerable portions of the German people will never believe, however, that such a conspiracy could have been the cause of their misfortune. Let politicians and jurists argue about it; they will only make it harder for the German people to draw a lesson from this Trial, which is of decisive importance for its attitude toward the past and the shaping of its future—the acknowledgement that the Führer principle as a political principle is wrong. In the military leadership of all armies in this world, the Führer principle has proved itself in the best possible way. On the strength of this experience I considered it also right with regard to political leadership, particularly in the case of a nation in the hopeless position in which the German people found itself in 1932. The great successes of the new government and a feeling of happiness such as the entire nation had never known before seemed to prove it right. But if, in spite of all the idealism, all the decency, and all the devotion of the great majority of the

German people, no other result has been achieved through the Führer principle, in the last analysis, than the misfortune of this people, then this principle as such must be wrong, wrong because apparently human nature is not in a position to use the power of this principle for good, without falling victim to the temptations of this power.

Thirdly, my life was devoted to my profession and thereby to the service of the German people. As the last Commander-in-Chief of the German Navy and as the last Head of the State, I bear the responsibility towards the German people for everything which I have done and left undone.

THE PRESIDENT: I call upon the Defendant Erich Raeder.

ERICH RAEDER (Defendant): This Trial, now that the evidence has been concluded, has had a beneficial result for the German nation; but an unexpected one for the Prosecution. Unimpeachable testimony has cleared the German people—and with them all the persons in the same situation as myself—of the most serious charge, the charge that they had known of the killing of millions of Jews and other people, if they had not actually participated in it. The attempt of the Prosecution, who through earlier interrogations had known the truth for a long time, and who nevertheless continued and repeated their accusations—with the raised finger of the preacher of morals—in the trial briefs and during cross-examinations, this attempt to defame the entire people has collapsed upon itself.

The second result of this Trial, which is general and therefore of interest for me also, is the fact that on the basis of the evidence the German Navy's cleanness and decency in battle were fundamentally confirmed. The German Navy stands before this Court and before the world with a clean shield and an unstained flag.

With a clear conscience we can most emphatically refute Shawcross's attempts in his final speech to place the submarine warfare on the same level with atrocities, because according to the clear results of the evidence they are untenable. In particular, the charge that the German Navy "never had the intention to observe the laws of naval warfare," as Shawcross said, Pages 70 and 71, has been completely invalidated. It has likewise been proved that the Naval Operations Staff and its chief never showed "contempt for international law" (Dubost's final speech), but on the contrary made an honest endeavor from the first to the very last moment to bring the conduct of modern naval warfare into harmony with the requirements of international law and humanity, on the same basis as our opponents.

I regret that the Prosecution tried again and again to defame the German Navy, and myself, as was shown by the submission of

its second modified trial brief, which differs from the first version only in that the number and severity of insulting statements have been increased. This fact shows that the prosecutors themselves felt that the factual accusations were too weak. But it is also my conviction that the British and American Prosecution have rendered ill service to their own Navies by morally defaming and characterizing as inferior the opponent against whom the Allied naval forces waged hard and honorable naval war over a number of years. I am convinced that the admiralties of the Allied powers understand me and that they know that they have not fought against a criminal.

The only way I can explain to myself this attitude adopted by the Prosecution is by assuming that its representatives, as I necessarily perceived again and again, revealed only very little judgment regarding the principles of truly soldier-like conduct and military leadership and that, therefore, they hardly seem qualified to judge soldierly honor.

To sum up: I have done my duty as a soldier because it was my conviction that this was the best way for me to serve the German people and fatherland, for which I have lived and for which I am prepared to die at any moment. If I have incurred guilt in any way, then this was chiefly in the sense that in spite of my purely military position I should perhaps have been not only a soldier, but also up to a certain point a politician, which, however, was in contradiction to my entire career and the tradition of the German Armed Forces. But then this would have been a guilt, a moral guilt, towards the German people, and could never at any time brand me as a war criminal. It would not have been guilt before a human criminal court, but rather guilt before God.

THE PRESIDENT: I call upon the Defendant Baldur von Schirach.

BALDUR VON SCHIRACH (Defendant): On 24 May I made a statement here for which I answer before God and my conscience and which I fully uphold, even today at the end of the Trial, because it is in accordance with my honest innermost conviction.

In their final speech the British Prosecution made the following statement:

> "Schirach corrupted millions of German children so that they became what they really are today, the blind instruments of that policy of murder and domination which these men have carried out."

If this charge were justified I would not say a word in my defense. However, it is not justified; it is untrue. Whoever in any way takes into consideration the results of the evidence in this Trial, and honestly appraises it, can never under any circumstances

raise the accusation against me that I "had corrupted the youth and poisoned their souls through my educational work." The principles and aims which I set for youth, and which were binding on the community which our youth built up with their own strength under my leadership, were the following: self-sacrificing love of the fatherland, the overcoming of social snobbery and class hatred, planned health supervision, physical training by means of hiking, games and sports, promotion of professional education, and particularly, comradely understanding with the youth of other countries. Ever since my own youth I have kept these principles and aims before my eyes as the ideals of a national German education. These principles and aims were not dictated to me by the Party or by the State, and if Hitler were present here this would be completely unimportant for my defense, because as German Youth Leader I do not appeal to his authority, but to my own.

These educational principles, however, which were demonstrated a thousand times in all my speeches, writings, and directives, and to which as Reich Youth Leader I have always remained faithful, are, according to my firm conviction, the principles of every leader of youth who is conscious of his duty toward his people and its youth. The achievements of our youth and its moral attitude have proved me right, and prove that it was never corrupt, and was not corrupted by me either. German youth was and is industrious and decent, honest and idealistic. In peace it contributed honorably toward its higher education, and in war it bravely did its duty towards our nation, for our German fatherland, to the utmost.

In this hour, when I can speak for the last time to the Military Tribunal of the four victorious powers, I should like, with a clear conscience, to confirm the following on behalf of our German youth: that it is completely innocent of the abuses and degeneration of the Hitler regime which were established during this Trial, that it never wanted this war, and that neither in peace nor in war did it participate in any crimes. As the leader of German youth for many years, I know the development, the opinions, and the conduct of our younger generation. Who could know it better than I? I always had my friends amongst this youth; in their midst I was always happy and at all times I have been proud of them.

I knew that in all the years when I was Reich Youth Leader, in spite of the fact that its membership counted millions, the youth, as a matter of principle and without exception, kept itself apart from any actions of which it would have to be ashamed today. It knew nothing of the innumerable atrocities which were committed by Germans; and just as it knew of no wrongs, it did not wish any wrong. It cannot and must not be overlooked that even during the greatest embitterment of the period following the war, nobody

could consider indicting the organization of German youth and its leaders as criminal. Unselfish comradeship in a youth movement which showed the greatest love for the poorest children of the people, loyalty to the homeland, pleasure in sport, and honest understanding with the youth of other nations, that was the aim of our youth and the content of its training from the first to the last day of my term as Reich Youth Leader. This youth has not deserved the hard fate which has come upon it.

My personal fate is of secondary importance, but youth is the hope of our nation. And if I may express a wish in this last moment, then it is this:

Will you, as judges, help to remove the distorted picture of German youth which the world still has today in many places and which cannot stand up under historical investigation? Tell the world in your judgment that the libellous writings of a Gregor Ziemer used by the Prosecution contain nothing but the evil slanders of a man who has extended his hatred against everything German to German youth also. Will you, as judges, also help so that the youth organizations of your nations will once more resume their co-operation with the German youth at the point where, through no fault of the younger generation, it was interrupted in 1939?

With a grateful heart our youth has listened to the words of Lord Beveridge who has advocated, with farsightedness and passion, that German youth be declared free of guilt. Joyfully it will grasp the hand which is stretched out to it across the ruins and débris.

May you, Gentlemen of the Tribunal, contribute through your judgment towards creating an atmosphere of mutual respect among the younger generation, an atmosphere which is free of hatred and revenge.

That is my last request, a heartfelt request on behalf of our German youth!

THE PRESIDENT: The Tribunal will adjourn.

[A recess was taken until 1400 hours.]

Afternoon Session

THE PRESIDENT: The Tribunal has today received a further application from Dr. Seidl for a further examination of the condition of the Defendant Hess. As the Tribunal announced on 20 August, the Tribunal had received and considered the report of Captain G. M. Gilbert, dated 17 August, on the Defendant Hess; and it then considered it was unnecessary to have any further report. The Tribunal remains of that opinion, but will, of course, consider all the matters contained in Dr. Seidl's application, including the medical reports and the statement made by the Defendant Hess today.

I now call upon the Defendant...

DR. OTTO NELTE (Counsel for the Defendant Keitel): Mr. President, we have been informed that the High Tribunal considers this time suitable for submitting evidence which has not yet been formally introduced. In the session of 22 August 1946...

THE PRESIDENT: Very well, yes. The interrogatories which have come to hand, you mean?

DR. NELTE: Or affidavits which have been approved. In the court session of 22 August I was given permission to submit two affidavits by the Defendant Keitel and General Reinecke as soon as the translations were ready. In the meantime these translations have been made, and after discussing this matter, and with the agreement of the Prosecution, who have raised no objections and specifically expressed their approval through Sir David Maxwell-Fyfe in the session of 22 August, I shall submit two documents, K-26 and K-27, without reading them; and I ask the Tribunal to accept these two documents in evidence.

THE PRESIDENT: Yes, they will be considered.

DR. SERVATIUS: Mr. President, I have one more document to submit which has been granted me for the Political Leaders. It is an affidavit by Sauckel, PL-69. Then I also have an excerpt from the book entitled *Party Statistics,* which is connected with the estimate on the number of members, which I submitted to the Tribunal in a letter of 17 August. I have discussed this matter with the British Prosecution; and I ask permission to submit this page from that book also.

DR. KUBUSCHOK: In the case of Von Papen, I have my answer to the interrogatories sent to the Dutch Minister, Visser. It concerns Papen's efforts on behalf of peace in 1939, which the witness confirms. I should like to submit the answer as Exhibit Number 107.

THE PRESIDENT: Yes, Dr. Kubuschok.

DR. GUSTAV STEINBAUER (Counsel for the Defendant Seyss-Inquart): Mr. President, under Number 115 I am submitting the

sworn questions and answers which were admitted by the Tribunal, as well as the cross-examination of Dr. Arved Bolle, the harbor construction engineer of Hamburg. I am submitting this in German and in a certified English translation, and with respect to the accusation that Seyss-Inquart was responsible for the catastrophic famine in September 1944, I quote merely one sentence on Page 3 of the translation:

> "Practically speaking, therefore, as soon as the strike commenced, all inland shipping in Holland was taken over by the military and was thereby withdrawn from the influence of the civil administration and the Ministry of Transportation."

Furthermore, under Number 116 I submit the affidavit of the Defendant Seyss-Inquart which was granted me yesterday, and I should like to ask that the entire contents be accepted as evidence.

I have only one correction to make: Documents 3640-PS and 3645-PS, which we had not been able to submit to Seyss-Inquart according to the affidavit, were immediately placed at my disposal in photostat form upon my return by the French Delegation in their usual considerate manner, and the French Prosecution is ready to submit both of these documents in the original, as desired by the Tribunal.

DR. HANS FLÄCHSNER (Counsel for the Defendant Speer): Mr. President, from the interrogatories which were granted me in the spring of this year I have now received three more answers at the finish, which I should like to submit now as Speer Exhibits 47, 48, and 49. These are the interrogatories of the witnesses Von Poser, Malzacher, and Baumbach.

THE PRESIDENT: Then I call upon the Defendant Sauckel.

FRITZ SAUCKEL (Defendant): Gentlemen of the Tribunal:

I have been shaken to the very depths of my soul by the atrocities revealed in this Trial. In all humility and reverence, I bow before the victims and the fallen of all nations, and before the misfortune and suffering of my own people, with whom alone I must measure my fate.

I come from a social level completely different from that of my comrades accused with me. In my nature and thinking I remained a sailor and a worker.

After the first World War, the course of my life was determined through my own experience of the sorrows and needs of the masses of my people who were struggling for their existence. Inner conflicts forced me into politics. I could be nothing else but a Socialist. But I could not embrace the Communist manifesto. I was never antireligious or even irreligious, but quite the contrary. I fought a hard struggle with myself before I turned to politics.

And so I finally dedicated myself to socialist love and justice toward those whose only wealth is their labor and, at the same time, to the destiny of my nation. In this I saw the only possible connection between socialist thinking and true love of one's country. This belief alone determined my life and my actions.

I saw here no contradiction to the laws of humanity. I recognized no arbitrary dictatorship or tyranny in the principle of leaders and loyal followers. My error was perhaps the excess of my feelings and my confidence in, as well as my great veneration of, Hitler. I knew him only as the champion of the German poeple's rights to existence and saw him as the man who was kind to workers, women, and children, and who promoted the vital interests of Germany.

The Hitler of this Trial I could not recognize. Perhaps my loneliness and submersion in the world of my imagination and my work was a further defect.

I hardly ever had social contact with the occupants of high positions in the Reich; what little spare time I had belonged to my family. I was and am happy that my wife is the daughter of a worker, who himself was and remained a Social Democrat.

In this, my last word, I solemnly assure you that I was completely surprised by all foreign political events and the beginning of all military actions. Under no circumstances would I have cooperated as a German worker—and for German workers—to help plan the madness of unleashing a war of aggression.

I only became a National Socialist because I condemned class struggle, expropriation, and civil war, and because I firmly believed in Hitler's absolute desire for peace and understanding with the rest of the world, and in his work of reconstruction. Because I was a worker, I always did everything possible in my own field of activity to prevent excesses, arbitrary acts, and brutality of any kind. I was sufficiently naive, against the opposition of Himmler and Goebbels, to put through my manifesto and many other decrees for the employment of labor, which prescribed humane and correct treatment of foreign workers as compulsory for all offices. I never would have been able to bear the knowledge of these terrible secrets and crimes without protest, nor, with such knowledge, would I have been able to face my people or my 10 innocent children.

I had no part in any conspiracy against peace or against humanity, nor did I tolerate murders or mistreatment. During the war itself I had to do my duty. I received the position of Plenipotentiary General for the Allocation of Labor in 1942, at a time of grave military crisis, and it came as a complete surprise to me. I was bound by the existing labor laws, the orders of the Führer, and the decrees of the Ministerial Council for the Defense of the Reich.

I do not know why it was just I who received this task. In my own Gau I had particularly gained the confidence of the workers, farmers, and artisans, and even before 1933, that is, before Hitler assumed power, I had been elected by a large majority in free parliamentary elections as the chief of the state government there.

I believe that Providence endowed me with a good talent for organization and practical work, as well as with a capacity for enthusiasm. Perhaps that was the reason why I received my task. It was a heavy burden for me. The soil of Berlin was completely alien to me. Because I am a worker, I never thought of making slaves of foreign human beings. My requirement that people be managed economically does not in any way mean their inhuman exploitation, but rather their economic, rational, and correct employment in labor.

It was never my intention to commit crimes against international law, the laws of war, or the laws of humanity. Not for a single moment did I doubt the legality and admissibility of my task, for I thought it completely out of the question that the German Government would break international law.

If, however, you tell me that, in spite of that, German labor laws could not be applied in the occupied territories, then I beg to reply that even high-ranking Frenchmen, Belgians, Poles, and also Russians have told me that they were supporting Germany with labor in order to protect Europe against a threatening Communist system, and in order to prevent unemployment and mass suffering during the war.

However, not only did I work for the fulfilment of my task with the greatest zeal, but at the same time I tried with all my might and with all possible means, immediately upon assuming office, to eliminate the critical conditions in the organization and care of foreign laborers, which had developed through the winter catastrophe of 1941 to 1942, and to do away with all shortcomings and abuses.

I also believed, as my documents prove, that we could win the foreign workers over to our German cause by giving them the proper treatment I demanded. Perhaps in the eyes of Himmler and Goebbels I was a hopeless Utopian—they were my foes. But I honestly fought to have the foreign workers receive the same rights and conditions as the German workers. This is also attested to by the numerous documents of my defense counsel and has been confirmed by all the statements of the witnesses before this Tribunal.

If my work was incomplete nobody can regret it more deeply and painfully than myself. Unfortunately that was only partly in my power, as my counsel has proved.

The evidence has shown that things happened in the occupied territories on which I and the labor employment office, which was civilian-controlled, could exercise no influence whatsoever. However, all German enterprises and agencies requiring labor complained to me that I was always delivering too few workers for the war effort, and that it would be my fault if the war economy and food economy were threatened by dangerous crises. These heavy responsibilities and worries dominated me so much that I found and had no time at all for other developments. This I regret.

I assume responsibility for my decrees and for my employees. I never saw the records of the Central Planning Board before this Trial; otherwise I would have corrected false or unclear passages, as, for instance, the passage with reference to the impossible figure of only 200,000 volunteer workers. This also applies to a number of other statements which were incorrectly taken down by third parties and never actually put into practice.

Because I am a worker and have personally served on foreign ships, I am grateful to the foreign workers who were in Germany, for they helped us greatly and they worked well. This, perhaps, is proof of the fact that on the whole they were treated decently and humanely. I myself often visited them. Because I was a working man, I spent the Christmas celebrations of 1943 and 1944 with foreign workers in order to show my attitude towards them.

My own children worked among foreign workers, under the same working conditions. Could I, or German workers and the German people, consider that as slavery? The necessity for this was our emergency. The German people and the German workers would never have tolerated conditions comparable to slavery around them.

My defense counsel has presented the complete truth about my case with extreme objectivity. I thank him for this from the bottom of my heart. For his own part, he was strict and correct in investigating my case. My intentions and conscience are clean.

The shortcomings and the necessities of the war, the frightful conditions it produced, have touched my heart deeply.

I myself am prepared to meet any fate which Providence has in store for me, just like my son, who was killed in the war.

The Gauleiter whom I employed as plenipotentiaries for the allocation of labor had the sole task of providing for the proper treatment and care of the German and foreign workers.

God protect my people, whom I love above all else, and may the Lord God again bless the labor of German workers, to whom my entire life and effort were devoted, and may He give peace to the world.

THE PRESIDENT: I call upon the Defendant Alfred Jodl.

ALFRED JODL (Defendant): Mr. President, may it please the Tribunal, it is my unshakable belief that later historians will arrive at a just and objective verdict concerning the higher military leaders and their assistants, for they, and the entire German Wehrmacht with them, were confronted with an insoluble task, namely, to conduct a war which they had not wanted under a commander-in-chief whose confidence they did not possess and whom they themselves only trusted within limits; with methods which frequently were in contradiction to their principles of leadership and their traditional, proved opinions; with troops and police forces which did not come under their full command; and with an intelligence service which in part was working for the enemy. And all this in the complete and clear realization that this war would decide the life or death of our beloved fatherland. They did not serve the powers of Hell and they did not serve a criminal, but rather their people and their fatherland.

As far as I am concerned, I believe that no man can do more than to try to reach the highest of the goals which appear attainable to him. That and nothing else has always been the guiding pinciple for my actions, and for that reason, Gentlemen of the Tribunal, no matter what verdict you may pass upon me, I shall leave this courtroom with my head held as high as when I entered it many months ago.

But whoever calls me a traitor to the honorable tradition of the German Army, or whoever asserts that I remained at my post for personal and egotistical reasons, him I shall call a traitor to the truth. In a war such as this, in which hundreds of thousands of women and children were annihilated by layers of bombs or killed by low-flying aircraft, and in which partisans used every—yes, every single means of violence which seemed expedient, harsh measures, even though they may appear questionable from the standpoint of international law, are not a crime in morality or in conscience.

For I believe and avow that a man's duty toward his people and fatherland stands above every other. To carry out this duty was for me an honor, and the highest law.

May this duty be supplanted in some happier future by an even higher one, by the duty toward humanity.

THE PRESIDENT: I call upon the Defendant Franz von Papen.

FRANZ VON PAPEN (Defendant): Your Lordship, may it please the Tribunal, when I returned home in 1919, I found a people, torn by the political struggles of the parties, which was then attempting to find a new mode of existence after the downfall. In those days of my country's misfortune, I believed as a responsible German that I had no right to stand inactive on the sidelines.

It was clear to me that a rebirth of my country was only possible by way of peace and intellectual understanding, an understanding which did not deal only with political forms, but was even more concerned with the solution of the extremely urgent social problems, the first condition for bringing about internal peace.

Against the onslaught of radical ideologies it was necessary—and this was my conviction—that Christianity be maintained as the starting point of the new political order. On the issue of this internal understanding the maintenance of European peace would have to depend.

The best years of my lifework were devoted to this question, in the community, in Parliament, in the Prussian State, and in the Reich. Anyone who is acquainted with the facts knows that I did not aspire to high office in 1932. Hindenburg's urgent appeal on behalf of the fatherland was to me a command. And when, like countless other Germans in the emergency of 1933, I decided to co-operate by occupying a prominent position, then I did so because I considered it to be my duty, because I believed in the possibility of steering National Socialism into responsible channels, and because I hoped that the maintenance of Christian principles would be the best counterweight against ideological and political radicalism and would guarantee peaceful domestic and foreign development.

That goal was not reached. The power of evil was stronger than the power of good and drove Germany inevitably into catastrophe. But should that be a reason to damn those who kept the banner of faith flying in the struggle against disbelief? And does that entitle Justice Jackson to claim that I was nothing but the hypocritical agent of a godless government? Or what gives Sir Hartley Shawcross the right to say, with scorn, ridicule, and contempt: "He preferred to reign in Hell rather than serve in Heaven"?

Gentlemen of the Prosecution, it is not for you to judge here, that is for others. But I should like to ask: Is not the question of defending transcendental values more than ever the central issue today in the efforts to rebuild a world?

I believe that I can face my responsibility with a clear conscience. Love of country and people was the only decisive factor in all my actions. I spoke without fear of man whenever I had to speak. It was not the Nazi regime but the fatherland which I served when, in spite of the severest disappointments at the failure of my hopes in the field of domestic policy, I attempted, from the vantage point of my diplomatic posts, to save at least the peace.

When I examine my conscience, I do not find any guilt where the Prosecution has looked for it and claims to have found it. But where is the man without guilt and without faults? Seen from the historical point of view, this guilt may be found on that dramatic

day of 2 December 1932, when I did not attempt to persuade the Reich President with all the means at my disposal to abide by the decision he had made the night before—despite the violation of the Constitution and despite the threat by General von Schleicher to start a civil war.

Does the Prosecution want to damn all those who with honest intentions offered to co-operate? Does it claim that the German people elected Hitler in 1933 because they wanted war? Does it really claim that the overwhelming majority of the German people made their tremendous spiritual and material sacrifices—including even the sacrifice of their youth on the battlefields of this war—merely for Hitler's Utopian and criminal aims?

This High Tribunal faces this infinitely difficult task without yet having gained sufficient distance in time from the catastrophe to be able to recognize the causes and results of historical developments in their true connections.

Only if this High Tribunal recognizes and acknowledges the historic truth will the historical meaning of this Tribunal be fulfilled. Only then will the German people, in spite of the destruction of its Reich, not only come to a realization of its errors, but also find the strength for its future task.

THE PRESIDENT: I call upon the Defendant Arthur Seyss-Inquart.

ARTHUR SEYSS-INQUART (Defendant): Mr. President, in my final words I want to make one more contribution in my power toward clearing up the matters which have been treated here, by explaining the personal motives and considerations for my actions.

I have little to say concerning the Austrian question. I regard the Anschluss, apart from later events, as an exclusively German domestic affair. For every Austrian the Anschluss was a goal in itself and never, even remotely, a preparatory step for a war of aggression. The idea of the Anschluss was much too important a goal for that; indeed, it was the outstanding goal of the German people. "To the German people I make a report of the greatest success of my life." I believed these words of the Führer when he spoke on 15 March 1938 in the Hofburg in Vienna. Moreover, they were true. When on 11 March 1938 at about 8 o'clock in the evening, and after the complete breakdown of every other political and state authority, I followed the way prescribed by Berlin, the reason was that the unjustified opposition to the carrying out of orderly elections had opened the doors to radical action, practically as well as psychologically. I asked myself whether I had the right to oppose these methods, after my plan had apparently not been practicable.

However, since this procedure appeared justified, I felt it my duty to lend such aid as I could under the circumstances. I am

convinced that it is due mainly to my aid that this fundamental revolution, particularly during the night of 12 March, took place so quietly and without bloodshed, although strong hatred was pent up in the hearts of the Austrian National Socialists.

I was in favor of the unity of all Germans, no matter what form of government Germany had. I believe that the Prosecution is utilizing documents of the period following the Anschluss in order to deduce my plans for annexation and aggression. These are documents and remarks regarding the Danube area and Czechoslovakia dated later than 1 October 1938, and after the Munich Agreement, and regarding the Vistula area later than 1 September 1939, after the outbreak of war. I admit these statements, and in the meantime their correctness has been confirmed. As long as the Danube area was incorporated in the Austro-Hungarian monarchy its development was beneficial to all, and the German element did not display any imperialistic activity, but only furthered and contributed to culture and industry. Ever since this area was broken up by the integral success of the nationalistic principle, it has never achieved peace. Remembering this, I thought of reorganizing a common Lebensraum, which, as I openly declared, should give as the most essential requirement such a social order to all, namely, Germans, Czechs, Slovaks, Hungarians, and Romanians, as would make life worth living for every individual. I also thought of Czechoslovakia with this in mind, recalling the co-ordination of languages in Moravia, which I myself had witnessed.

If I spoke of the Vistula area after 1 September 1939 as a German area of destiny, this was out of my endeavor to prevent dangers for the future, which had become obvious through the outbreak of war and which have today become a terrible reality to every German. These statements can no more serve as evidence of the intention to wage a war of aggression than the decision of Teheran concerning the German eastern territories.

Then the war broke out, which I immediately recognized then and afterwards as a life-and-death struggle for the German people. To the demand for an unconditional surrender I could only oppose an unconditional "no" and my unconditional service to my country. I believe in the words of Rathenau: "Courageous nations can be broken, but never bent."

In connection with the Netherlands, I should like to say only the following with reference to the charge that I interfered in the administration for political purposes. Nobody in the Netherlands was forced into any political allegiance or limited in his freedom or property if he harbored anti-German ideas during the occupation, as long as he did not engage in hostile activity.

I have already explained that I had serious humane and legal scruples against the evacuation of the Jews. Today I must say to myself that there appears to be a fundamental justification for large-scale and permanent evacuations, for such evacuations are today affecting more than 10 million Germans who have been settled in their homes for many centuries.

After the middle of 1944, saboteurs and terrorists were shot by the Police on the basis of a direct Führer order, if their activity was proved. During this time I only heard of shootings of this kind, never of "shootings of hostages" in the actual sense. The Dutch patriots who lost their lives during the occupation are today rightly considered fallen heroes. Does it not put this heroism on a lower plane to represent them exclusively as the victims of a crime, thus implying that their conduct would not have been so hazardous at all if the occupying power had conducted itself in a proper manner? They all stood in a voluntary and active connection with the resistance movement. They share the fate of front-line soldiers: the bullet hits the man who is active in a danger zone.

Could I have been the friend of the Dutch, the overwhelming majority of whom were against my people, which, in turn, was fighting for its existence? Besides, I have only regretted that I did not come to the country as a friend. But I was neither a hangman nor, of my own will, a plunderer, as the Soviet Prosecution contends. My conscience is untroubled to the extent that the biological condition of the Dutch people during the period of my full responsibility—that is, up to the middle of 1944—was better than in the first World War, when it was neither occupied nor blockaded. This is evidenced by the statistics of marriages and births and by the mortality and illness figures. This is certainly also to be attributed to the effects of a number of measures instituted by me, for example, an extensive health insurance, contributions to married couples and children, graduation of the income tax according to social position, *et cetera.* Finally, I did not carry out the order to destroy the country, which was issued to me, and on my own initiative I put an end to the occupation for defense purposes when resistance in Holland had become senseless.

I have two more statements regarding Austria.

If the Germans in Austria wish their common destiny with the Germans in the Reich to become a reality inwardly and outwardly, then no authoritarian obstacles ought to be opposed to this wish, and no room given for interference by non-German forces in this decision. Otherwise, the whole German people would follow the most radical trend towards an Anschluss without considering how the rest of the political program of such a movement might be constituted.

Secondly, on the question of the effectiveness of provisions of international law during a war: From the point of view of her own interests Germany cannot desire any war. She must even see to it that no weapons are forced into her hands. The other nations do not want a war, either, but that possibility is never absolutely out of the question unless nations abhor it. It is, therefore, wrong to try to minimize a future war and reduce the defensive forces in the nations by creating the impression that a future world war could in some way be kept within the framework of the Hague Conventions on Land Warfare, or some other international agreement.

And now I probably still owe an explanation regarding my attitude to Adolf Hitler. Since he saw the measure of all things only in himself, did he prove himself incapable of fulfilling a decisive task for the German people, indeed, for Europe itself, or was he a man who struggled, although in vain, even to the point of committing unimaginable excesses, against the course of an inexorable fate? To me he remains the man who made Greater Germany a fact in German history. I served this man. And now? I cannot today cry "Crucify him," since yesterday I cried "Hosanna."

Finally I thank my defense counsel for the care and circumspection he has employed in my defense.

My last word is the principle by which I have always acted and to which I will adhere to my last breath: "I believe in Germany."

THE PRESIDENT: I call on the Defendant Albert Speer.

ALBERT SPEER (Defendant): Mr. President, may it please the Tribunal: Hitler and the collapse of his system have brought a time of tremendous suffering upon the German people. The useless continuation of this war and the unnecessary destruction make the work of reconstruction more difficult. Privation and misery have come to the German people. After this Trial, the German people will despise and condemn Hitler as the proven author of its misfortune. But the world will learn from these happenings not only to hate dictatorship as a form of government, but to fear it.

Hitler's dictatorship differed in one fundamental point from all its predecessors in history. His was the first dictatorship in the present period of modern technical development, a dictatorship which made complete use of all technical means in a perfect manner for the domination of its own nation.

Through technical devices such as radio and loudspeaker 80 million people were deprived of independent thought. It was thereby possible to subject them to the will of one man. The telephone, teletype, and radio made it possible, for instance, for orders from the highest sources to be transmitted directly to the lowest-ranking units, where, because of the high authority, they were carried out without criticism. Another result was that numerous offices and

headquarters were directly attached to the supreme leadership, from which they received their sinister orders directly. Also, one of the results was a far-reaching supervision of the citizen of the state and the maintenance of a high degree of secrecy for criminal events.

Perhaps to the outsider this machinery of the state may appear like the lines of a telephone exchange—apparently without system. But like the latter, it could be served and dominated by one single will.

Earlier dictators during their work of leadership needed highly-qualified assistants, even at the lowest level, men who could think and act independently. The totalitarian system in the period of modern technical development can dispense with them; the means of communication alone make it possible to mechanize the subordinate leadership. As a result of this there arises a new type: the uncritical recipient of orders.

We had only reached the beginning of the development. The nightmare of many a man that one day nations could be dominated by technical means was all but realized in Hitler's totalitarian system.

Today the danger of being terrorized by technocracy threatens every country in the world. In modern dictatorship this appears to me inevitable. Therefore, the more technical the world becomes, the more necessary is the promotion of individual freedom and the individual's awareness of himself as a counterbalance.

Hitler not only took advantage of technical developments to dominate his own people—he almost succeeded, by means of his technical lead, in subjugating the whole of Europe. It was merely due to a few fundamental shortcomings of organization such as are typical in a dictatorship because of the absence of criticism, that he did not have twice as many tanks, aircraft, and submarines before 1942.

But, if a modern industrial state utilizes its intelligence, its science, its technical developments, and its production for a number of years in order to gain a lead in the sphere of armament, then even with a sparing use of its manpower it can, because of its technical superiority, completely overtake and conquer the world, if other nations should employ their technical abilities during that same period on behalf of the cultural progress of humanity.

The more technical the world becomes, the greater this danger will be, and the more serious will be an established lead in the technical means of warfare.

This war ended with remote-controlled rockets, aircraft traveling at the speed of sound, new types of submarines, torpedoes which find their own target, with atom bombs, and with the prospect of a horrible kind of chemical warfare.

Of necessity the next war will be overshadowed by these new destructive inventions of the human mind.

In 5 or 10 years the technique of warfare will make it possible to fire rockets from continent to continent with uncanny precision. By atomic power it can destroy one million people in the center of New York in a matter of seconds with a rocket operated, perhaps, by only 10 men, invisible, without previous warning, faster than sound, by day and by night. Science is able to spread pestilence among human beings and animals and to destroy crops by insect warfare. Chemistry has developed terrible weapons with which it can inflict unspeakable suffering upon helpless human beings.

Will there ever again be a nation which will use the technical discoveries of this war for the preparation of a new war, while the rest of the world is employing the technical progress of this war for the benefit of humanity, thus attempting to create a slight compensation for its horrors? As a former minister of a highly developed armament system, it is my last duty to say the following:

A new large-scale war will end with the destruction of human culture and civilization. Nothing can prevent unconfined engineering and science from completing the work of destroying human beings, which it has begun in so dreadful a way in this war.

Therefore this Trial must contribute towards preventing such degenerate wars in the future, and towards establishing rules whereby human beings can live together.

Of what importance is my own fate, after everything that has happened, in comparison with this high goal?

During the past centuries the German people have contributed much towards the creation of human civilization. Often they have made these contributions in times when they were just as powerless and helpless as they are today. Worth-while human beings will not let themselves be driven to despair. They will create new and lasting values, and under the tremendous pressure brought to bear upon everyone today these new works will be of particular greatness.

But if the German people create new cultural values in the unavoidable times of their poverty and weakness, and at the same time in the period of their reconstruction, then they will have in that way made the most valuable contribution to world events which they could make in their position.

It is not the battles of war alone which shape the history of humanity, but also, in a higher sense, the cultural achievements which one day will become the common property of all humanity. A nation which believes in its future will never perish. May God protect Germany and the culture of the West.

THE PRESIDENT: I call upon Defendant Constantin von Neurath.

CONSTANTIN VON NEURATH (Defendant): Firm in the conviction that truth and justice will prevail before this High Tribunal over all hatred, slander, and misrepresentation, I believe that I should add only this one thing to the words of my defense counsel: my life was consecrated to truth and honor, to the maintenance of peace and the reconciliation of nations, to humanity and justice. I stand with a clear conscience not only before myself, but before history and the German people.

If, in spite of this, the Tribunal should find me guilty, I shall be able to bear even this and take it upon myself as a last sacrifice on behalf of my people, to serve whom was the substance and purpose of my life.

THE PRESIDENT: I call upon the Defendant Hans Fritzsche.

HANS FRITZSCHE (Defendant): May it please the Tribunal: The chief prosecutors in their final speeches have repeated several of the accusations against me, although in my opinion they were clearly refuted by the evidence.

I have summarized some of these points. I do not propose to read them. If it is not contrary to the rules of this Tribunal, and if it please the Tribunal, then I shall request that they take judicial notice of this summary, which amounts to six pages. They are available in translation.

I should not like to waste the great opportunity for the final word in this Trial by enumerating details, all of which can be found in the transcripts and documents. I must turn to the sum total of all the crimes, since the Prosecution alleges that I was connected with all these crimes through a conspiracy.

To this charge I can only say that if I had spread the kind of propaganda in my radio talks of which the Prosecution now accuses me; if I had advocated the doctrine of the master race; if I had preached hatred against other nations; if I had incited people to wars of aggression, acts of violence, murder, and inhumanity; if I had done all that—then, Gentlemen of the Tribunal, the German nation would have turned from me and would have repudiated the system for which I spoke.

Even if I had done this only in disguised form, my listeners would have noticed it and repudiated it.

But the misfortune lies precisely in the fact that I did not advocate all these doctrines which were secretly guiding the actions of Hitler and a small circle which, in the light of the testimony of the witnesses Hoess, Reinecke, and Morgen, among others, is now slowly emerging from the mist in which it was hidden until now.

I believed in Hitler's assurances of a sincere desire for peace. Therefore I strengthened the trust of the German people in them.

I believed in the official German denials of all foreign reports of German atrocities. And with my belief I strengthened the belief of the German people in the uprightness of the German state leadership.

That is my guilt—no more, no less.

The prosecutors have expressed the horror of their nations at the atrocities which occurred. They did not expect any good from Hitler, and they are shattered by the extent of what really happened. But try for a moment to understand the indignation of those who expected good from Hitler and who then saw how their trust, their good will, and their idealism were misused. I find myself in the position of a man who has been deceived, together with many, many other Germans of whom the Prosecution says that they could have recognized all that happened from the smoke rising from the chimneys of the concentration camps, or from the mere sight of the prisoners, and so forth.

I feel that it is a great misfortune that the Prosecution has pictured these matters in such a way as if all of Germany had been a tremendous den of iniquity. It is a misfortune that the Prosecution is generalizing the extent of the crimes which are in themselves horrible enough. As against this I must say that if anyone once believed in Hitler during the years of peaceful reconstruction, he only needed to be loyal, courageous, and self-sacrificing to go on believing in him until, by the discovery of carefully-hidden secrets, he could recognize the devil in him. That is the only explanation for the struggle which Germany carried on for 68 months. Such a willingness to sacrifice does not grow from crime, but only from idealism and good faith, and from clever and apparently honest organization.

I regret that the Prosecution has undertaken to generalize the crimes, because it is bound to add still more to the mountain of hatred which lies upon the world. But the time has come to interrupt the perpetual cycle of hatred which has dominated the world up to now. It is high time to call a halt to the alternate sowing and reaping of new harvests of hatred. The murder of five million people is an awful warning, and today humanity possesses the technical means for its own destruction. Therefore, in my judgment, the Prosecution should not replace one hatred by another.

I have a right to say this before my conscience, because I have not preached hatred, as the Prosecution asserted, nor have I closed the door to pity. On the contrary, many times, even in the middle of the bitterest struggle, I have raised the voice of humanity. This is proved by the vast majority of my speeches, which one can compare at any time with the statements of my enemies. Even if my addresses could not be submitted here before the Tribunal, they cannot have simply vanished from this earth.

It is perfectly possible, perhaps even understandable, that the storm of indignation which swept the world because of the atrocities which were committed should obliterate the borders of individual responsibility. If that happens, if collective responsibility is to be attached even to those who were misused in good faith, Your Honors, I beg you to hold me responsible. As my defense counsel has emphasized, I do not hide behind the millions who acted in good faith and were misused. I will place myself before those for whom my good faith was once an additional guarantee of the purity of purpose of the system. But this responsibility of mine only applies to those who acted in good faith, not for those who originated, assisted in, or knew of these atrocities, beginning with murder and ending with the selection of living human beings for anatomical collections.

Between these criminals and myself there is only one connection: they merely misused me in a different way than they misused those who became their physical victims.

It may be difficult to separate German crime from German idealism. It is not impossible. If this distinction is made, much suffering will be avoided for Germany and for the world.

THE PRESIDENT: The Tribunal will carefully consider the statements which the defendants have made.

The Tribunal is now about to adjourn for the consideration of its judgment. Before doing so, the Tribunal wishes to express its appreciation of the way in which Counsel for the Prosecution and Counsel for the Defense have performed their duties.

The Tribunal have been informed that the defendants' counsel have been receiving letters from Germans improperly criticizing their conduct as counsel in these proceedings. The Tribunal will protect counsel insofar as it is necessary so long as the Tribunal is in session, and it has no doubt that the Control Council will protect them thereafter against such attacks. In the opinion of the Tribunal, Defense Counsel have performed an important public duty in accordance with the high traditions of the legal profession, and the Tribunal thanks them for their assistance.

The Tribunal will now adjourn until 23 September, in order to consider its judgment. On that date the judgment will be announced. If any postponement should be necessary, due notice will be given.

[The Tribunal adjourned until 30 September 1946 at 1000 hours.]

TWO HUNDRED AND SEVENTEENTH DAY

Monday, 30 September 1946

Morning Session

THE PRESIDENT: The Judgment of the International Military Tribunal will now be read. I shall not read the title and the formal parts.

JUDGMENT *

On 8 August 1945, the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of the United States of America, the Provisional Government of the French Republic, and the Government of the Union of Soviet Socialist Republics entered into an agreement establishing this Tribunal for the trial of War Criminals whose offenses have no particular geographical location. In accordance with Article 5, the following Governments of the United Nations have expressed their adherence to the Agreement:

> Greece, Denmark, Yugoslavia, the Netherlands, Czechoslovakia, Poland, Belgium, Ethiopia, Australia, Honduras, Norway, Panama, Luxembourg, Haiti, New Zealand, India, Venezuela, Uruguay, and Paraguay.

By the Charter annexed to the Agreement, the constitution, jurisdiction and functions of the Tribunal were defined.

The Tribunal was invested with power to try and punish persons who had committed Crimes against Peace, War Crimes, and Crimes against Humanity as defined in the Charter.

The Charter also provided that at the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization.

In Berlin, on 18 October 1945, in accordance with Article 14 of the Charter, an indictment was lodged against the defendants named in the caption above, who had been designated by the

* Editor's Note. The Judgment is rendered verbatim as originally pronounced by the Tribunal. Later study has shown that in the translations of documents quoted several inaccuracies have occurred. For the benefit of students improved versions have been compiled in an appendix which will be found after the Judgment. References are given by small numbers in the text.

Committee of the Chief Prosecutors of the signatory Powers as major war criminals.

A copy of the Indictment in the German language was served upon each defendant in custody at least 30 days before the Trial opened.

This Indictment charges the defendants with Crimes against Peace by the planning, preparation, initiation and waging of wars of aggression, which were also wars in violation of international treaties, agreements, and assurances, with War Crimes and with Crimes against Humanity. The defendants are also charged with participating in the formulation or execution of a common plan or conspiracy to commit all these crimes. The Tribunal was further asked by the Prosecution to declare all the named groups or organizations to be criminal within the meaning of the Charter.

The Defendant Robert Ley committed suicide in prison on 25 October 1945. On 15 November 1945 the Tribunal decided that the Defendant Gustav Krupp von Bohlen and Halbach could not then be tried because of his physical and mental condition, but that the charges against him in the Indictment should be retained for trial thereafter, if the physical and mental condition of the defendant should permit. On 17 November 1945 the Tribunal decided to try the Defendant Bormann in his absence under the provisions of Article 12 of the Charter. After argument and consideration of full medical reports, and a statement from the defendant himself, the Tribunal decided on 1 December 1945 that no grounds existed for a postponement of the trial against the Defendant Hess because of his mental condition. A similar decision was made in the case of the Defendant Streicher.

In accordance with Articles 16 and 23 of the Charter, counsel were either chosen by the defendants in custody themselves, or at their request were appointed by the Tribunal. In his absence the Tribunal appointed counsel for the Defendant Bormann, and also assigned counsel to represent the named groups or organizations.

The Trial, which was conducted in four languages—English, Russian, French, and German—began on 20 November 1945, and pleas of "Not Guilty" were made by all the defendants except Bormann.

The hearing of evidence and the speeches of counsel concluded on 31 August 1946.

Four hundred and three open sessions of the Tribunal have been held. Thirty-three witnesses gave evidence orally for the Prosecution against the individual defendants, and 61 witnesses, in addition to 19 of the defendants, gave evidence for the Defense.

A further 143 witnesses gave evidence for the Defense by means of written answers to interrogatories.

The Tribunal appointed Commissioners to hear evidence relating to the organizations, and 101 witnesses were heard for the Defense before the Commissioners, and 1,809 affidavits from other witnesses were submitted. Six reports were also submitted, summarizing the contents of a great number of further affidavits.

Thirty-eight thousand affidavits, signed by 155,000 people, were submitted on behalf of the Political Leaders; 136,213 on behalf of the SS; 10,000 on behalf of the SA; 7,000 on behalf of the SD; 3,000 on behalf of the General Staff and OKW; and 2,000 on behalf of the Gestapo.

The Tribunal itself heard 22 witnesses for the organizations. The documents tendered in evidence for the prosecution of the individual defendants and the organizations numbered several thousands. A complete stenographic record of everything said in court has been made, as well as an electrical recording of all the proceedings.

Copies of all the documents put in evidence by the Prosecution have been supplied to the Defense in the German language. The applications made by the defendants for the production of witnesses and documents raised serious problems in some instances, on account of the unsettled state of the country. It was also necessary to limit the number of witnesses to be called, in order to have an expeditious hearing, in accordance with Article 18(c) of the Charter. The Tribunal, after examination, granted all those applications which in their opinion were relevant to the defense of any defendant or named group or organization, and were not cumulative. Facilities were provided for obtaining those witnesses and documents, granted through the office of the General Secretary established by the Tribunal.

Much of the evidence presented to the Tribunal on behalf of the Prosecution was documentary evidence, captured by the Allied armies in German army headquarters, Government buildings, and elsewhere. Some of the documents were found in salt mines, buried in the ground, hidden behind false walls and in other places thought to be secure from discovery. The case, therefore, against the defendants rests in a large measure on documents of their own making, the authenticity of which has not been challenged except in one or two cases.

The Charter Provisions

The individual defendants are indicted under Article 6 of the Charter, which is as follows:

"Article 6. The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of

the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes:

"The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

"(a) Crimes against Peace: namely, planning, preparation, initiation, or waging of a war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing:

"(b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment, or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity:

"(c) Crimes against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

"Leaders, organizers, instigators, and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan."

These provisions are binding upon the Tribunal as the law to be applied to the case. The Tribunal will later discuss them in more detail; but, before doing so, it is necessary to review the facts. For the purpose of showing the background of the aggressive war and war crimes charged in the Indictment, the Tribunal will begin by reviewing some of the events that followed the first World War, and in particular, by tracing the growth of the Nazi Party under Hitler's leadership to a position of supreme power from which it controlled the destiny of the whole German people, and paved the way for the alleged commission of all the crimes charged against the defendants.

The Nazi Regime in Germany —
the Origin and Aims of the Nazi Party

On 5 January 1919, not 2 months after the conclusion of the Armistice which ended the first World War, and 6 months before the signing of the peace treaties at Versailles, there came into being in Germany a small political party called the German Labor Party. On 12 September 1919 Adolf Hitler became a member of this party, and at the first public meeting held in Munich, on 24 February 1920, he announced the Party's program. That program, which remained unaltered until the Party was dissolved in 1945, consisted of 25 points, of which the following five are of particular interest on account of the light they throw on the matters with which the Tribunal is concerned:

"Point 1. We demand the unification of all Germans in the Greater Germany, on the basis of the right of self-determination of peoples.

"Point 2. We demand equality of rights for the German people in respect to the other nations; abrogation of the peace treaties of Versailles and Saint Germain.

"Point 3. We demand land and territory for the sustenance of our people, and the colonization of our surplus population.

"Point 4. Only a member of the race can be a citizen. A member of the race can only be one who is of German blood, without consideration of creed. Consequently, no Jew can be a member of the race....

"Point 22. We demand abolition of the mercenary troops and formation of a national army."

Of these aims, the one which seems to have been regarded as the most important, and which figured in almost every public speech, was the removal of the "disgrace" of the Armistice, and the restrictions of the peace treaties of Versailles and Saint Germain. In a typical speech at Munich on 13 April 1923, for example, Hitler said with regard to the Treaty of Versailles:

"The Treaty was made in order to bring 20 million Germans to their deaths, and to ruin the German nation... At its foundation our movement formulated three demands.

1. Setting aside of the Peace Treaty.

2. Unification of all Germans.

3. Land and soil to feed our Nation."

The demand for the unification of all Germans in the Greater Germany was to play a large part in the events preceding the seizure of Austria and Czechoslovakia; the abrogation of the Treaty of Versailles was to become a decisive motive in attempting to

justify the policy of the German Government; the demand for land was to be the justification for the acquisition of "living space" at the expense of other nations; the expulsion of the Jews from membership of the race of German blood was to lead to the atrocities against the Jewish people; and the demand for a national army was to result in measures or rearmament on the largest possible scale, and ultimately in war.

On 29 July 1921, the Party, which had changed its name to Nationalsozialistische Deutsche Arbeiterpartei (NSDAP), was reorganized, Hitler becoming the first "Chairman." It was in this year that the Sturmabteilung, or SA, was founded, with Hitler at its head, as a private para-military force, which allegedly was to be used for the purpose of protecting NSDAP leaders from attack by rival political parties, and of preserving order at NSDAP meetings, but in reality was used for fighting political opponents on the streets. In March 1923 the Defendant Göring was appointed head of the SA.

The procedure within the Party was governed in the most absolute way by the "leadership principle" (Führerprinzip).

According to the principle, each Führer has the right to govern, administer, or decree subject to no control of any kind and at his complete discretion, subject only to the orders he received from above.

This principle applied in the first instance to Hitler himself as the leader of the Party, and in a lesser degree to all other Party officials. All members of the Party swore an oath of "eternal allegiance" to the Leader.

There were only two ways in which Germany could achieve the three main aims above-mentioned, by negotiation or by force. The 25 points of the NSDAP program do not specifically mention the methods on which the leaders of the Party proposed to rely, but the history of the Nazi regime shows that Hitler and his followers were only prepared to negotiate on the terms that their demands were conceded, and that force would be used if they were not.

On the night of 8 November 1923, an abortive Putsch took place in Munich. Hitler and some of his followers burst into a meeting in the Bürgerbräu Cellar which was being addressed by the Bavarian Prime Minister, Kahr, with the intention of obtaining from him a decision to march forthwith on Berlin. On the morning of 9 November, however, no Bavarian support was forthcoming, and Hitler's demonstration was met by the armed forces of the Reichswehr and the police. Only a few volleys were fired; and after a dozen of his followers had been killed, Hitler fled for his life, and the demonstration was over. The Defendants Streicher, Frick, and Hess all took part in the attempted rising. Hitler was

later tried for high treason, and was convicted and sentenced to imprisonment. The SA was outlawed. Hitler was released from prison in 1924 and in 1925 the Schutzstaffel, or SS, was created, nominally to act as his personal bodyguard, but in reality to terrorize political opponents. This was also the year of the publication of *Mein Kampf*, containing the political views and aims of Hitler, which came to be regarded as the authentic source of Nazi doctrine.

The Seizure of Power

In the eight years that followed the publication of *Mein Kampf*, the NSDAP greatly extended its activities throughout Germany, paying particular attention to the training of youth in the ideas of National Socialism. The first Nazi youth organization had come into existence in 1922, but it was in 1925 that the Hitler Jugend was officially recognized by the NSDAP. In 1931 Baldur von Schirach, who had joined the NSDAP in 1925, became Reich Youth Leader of the NSDAP.

The Party exerted every effort to win political support from the German people. Elections were contested both for the Reichstag and the Landtage. The NSDAP leaders did not make any serious attempt to hide the fact that their only purpose in entering German political life was in order to destroy the democratic structure of the Weimar Republic, and to substitute for it a National Socialist totalitarian regime which would enable them to carry out their avowed policies without opposition. In preparation for the day when he would obtain power in Germany, Hitler in January 1929 appointed Heinrich Himmler as Reichsführer SS with the special task of building the SS into a strong but élite group which would be dependable in all circumstances.

On 30 January 1933 Hitler succeeded in being appointed Chancellor of the Reich by President Von Hindenburg. The Defendants Göring, Schacht, and Von Papen were active in enlisting support to bring this about. Von Papen had been appointed Reich Chancellor on 1 June 1932. On 14 June he rescinded the decree of the Brüning Cabinet of 13 April 1932, which had dissolved the Nazi paramilitary organizations, including the SA and the SS. This was done by agreement between Hitler and Von Papen, although Von Papen denies that it was agreed as early as 28 May, as Dr. Hans Volz asserts in *Dates from the History of the NSDAP;* but that it was the result of an agreement was admitted in evidence by Von Papen.

The Reichstag elections of 31 July 1932 resulted in a great accession of strength to the NSDAP, and Von Papen offered Hitler the post of Vice Chancellor, which he refused, insisting upon the Chancellorship itself. In November 1932 a petition signed by leading

industrialists and financiers was presented to President Hindenburg, calling upon him to entrust the Chancellorship to Hitler; and in the collection of signatures to the petition Schacht took a prominent part.

The election of 6 November, which followed the defeat of the Government, reduced the number of NSDAP members, but Von Papen made further efforts to gain Hitler's participation, without success. On 12 November Schacht wrote to Hitler:

> "I have no doubt that the present development of things can only lead to your becoming Chancellor. It seems as if our attempt to collect a number of signatures from business circles for this purpose was not altogether in vain...."

After Hitler's refusal of 16 November, Von Papen resigned, and was succeeded by General Von Schleicher; but Von Papen still continued his activities. He met Hitler at the house of the Cologne banker, Von Schröder, on 4 January 1933, and attended a meeting at the Defendant Ribbentrop's house on 22 January, with the Defendant Göring and others. He also had an interview with President Hindenburg on 9 January, and from 22 January onwards he discussed officially with Hindenburg the formation of a Hitler Cabinet.

Hitler held his first Cabinet meeting on the day of his appointment as Chancellor, at which the Defendants Göring, Frick, Funk, Von Neurath and Von Papen were present in their official capacities. On 28 February 1933 the Reichstag building in Berlin was set on fire. This fire was used by Hitler and his Cabinet as a pretext for passing on the same day a decree suspending the constitutional guarantees of freedom. The decree was signed by President Hindenburg and countersigned by Hitler and the Defendant Frick, who then occupied the post of Reich Minister of the Interior. On 5 March elections were held, in which the NSDAP obtained 288 seats of the total of 647. The Hitler Cabinet was anxious to pass an "Enabling Act" that would give them full legislative powers, including the power to deviate from the Constitution. They were without the necessary majority in the Reichstag to be able to do this constitutionally. They therefore made use of the decree suspending the guarantees of freedom and took into so-called "protective custody" a large number of Communist deputies and party officials. Having done this, Hitler introduced the "Enabling Act" into the Reichstag, and after he had made it clear that if it was not passed, further forceful measures would be taken, the act was passed on 24 March 1933.

I will now ask Mr. Justice Birkett to continue reading the Judgment.

MR. JUSTICE BIRKETT (Alternate member of the Tribunal for the United Kingdom):

The Consolidation of Power

The NSDAP, having achieved power in this way, now proceeded to extend its hold on every phase of German life. Other political parties were persecuted, their property and assets confiscated, and many of their members placed in concentration camps. On 26 of April 1933 Göring founded in Prussia the Geheime Staatspolizei or Gestapo as a secret police, and confided to the deputy leader of the Gestapo that its main task was to eliminate political opponents of National Socialism and Hitler. On 14 July 1933 a law was passed declaring the NSDAP to be the only political party, and making it criminal to maintain or form any other political party.

In order to place the complete control of the machinery of Government in the hands of the Nazi leaders, a series of laws and decrees were passed which reduced the powers of regional and local governments throughout Germany, transforming them into subordinate divisions of the Government of the Reich. Representative assemblies in the Länder were abolished, and with them all local elections. The Government then proceeded to secure control of the Civil Service. This was achieved by a process of centralization, and by a careful sifting of the whole Civil Service administration. By a law of 7 April it was provided that officials "who were of non-Aryan descent" should be retired; and it was also decreed that "officials who, because of their previous political activity, do not offer security that they will exert themselves for the national state without reservation, shall be discharged." The law of 11 April 1933 provided for the discharge of "all civil servants who belong to the Communist Party." Similarly, the judiciary was subjected to control. Judges were removed from the bench for political or racial reasons. They were spied upon and made subject to the strongest pressure to join the Nazi Party as an alternative to being dismissed. When the Supreme Court acquitted three of the four defendants charged with complicity in the Reichstag fire, its jurisdiction in cases of treason was thereafter taken away and given to a newly established "People's Court," consisting of two judges and five officials of the Party. Special courts were set up to try political crimes and only Party members were appointed as judges. Persons were arrested by the SS for political reasons, and detained in prisons and concentration camps; and the judges were without power to intervene in any way. Pardons were granted to members of the Party who had been sentenced by the judges for proved offenses. In 1935 several officials of the Hohenstein Concentration Camp were convicted of inflicting brutal treatment upon the inmates. High Nazi

officials tried to influence the court, and after the officials had been convicted, Hitler pardoned them all. In 1942 *Judges' Letters* were sent to all German judges by the Government, instructing them as to the "general lines" that they must follow.

In their determination to remove all sources of opposition, the NSDAP leaders turned their attention to the trade unions, the churches and the Jews. In April 1933 Hitler ordered the late Defendant Ley, who was then staff director of the political organization of the NSDAP, "to take over the trade unions." Most of the trade unions of Germany were joined together in two large federations, the "Free Trade Unions" and the "Christian Trade Unions." Unions outside these two large federations contained only 15 percent of the total union membership. On 21 April 1933 Ley issued an NSDAP directive announcing a co-ordination action to be carried out on 2 May against the Free Trade Unions. The directive ordered that SA and SS men were to be employed in the planned "occupation of trade union properties and for the taking into protective custody of personalities who come into question." At the conclusion of the action the official NSDAP press service reported that the National Socialist Factory Cells Organization had "eliminated the old leadership of Free Trade Unions" and taken over the leadership themselves. Similarly, on 3 May 1933 the NSDAP press service announced that the Christian Trade Unions "have unconditionally subordinated themselves to the leadership of Adolf Hitler." In place of the trade unions the Nazi Government set up a Deutsche Arbeitsfront (DAF), controlled by the NSDAP, and which, in practice, all workers in Germany were compelled to join. The chairmen of the unions were taken into custody and were subjected to ill-treatment, ranging from assault and battery to murder.

In their effort to combat the influence of the Christian churches, whose doctrines were fundamentally at variance with National Socialist philosophy and practice, the Nazi Government proceeded more slowly. The extreme step of banning the practice of the Christian religion was not taken, but year by year efforts were made to limit the influence of Christianity on the German people, since, in the words used by the Defendant Bormann to the Defendant Rosenberg in an official letter, "the Christian religion and National Socialist doctrines are not compatible." In the month of June 1941 the Defendant Bormann issued a secret decree on the relation of Christianity and National Socialism. The decree stated that:

> "For the first time in German history the Führer consciously and completely has the leadership in his own hand. With the Party, its components and attached units, the Führer has created for himself and thereby the German Reich leadership,

an instrument which makes him independent of the Treaty. . . .[1]) More and more the people must be separated from the Churches and their organs, the pastors . . . Never again must an influence on leadership of the people be yielded to the Churches. This influence must be broken completely and finally. Only the Reich Government and by its direction the Party, its components and attached units, have a right to leadership of the people."

From the earliest days of the NSDAP, anti-Semitism had occupied a prominent place in National Socialist thought and propaganda. The Jews, who were considered to have no right to German citizenship, were held to have been largely responsible for the troubles with which the nation was afflicted following on the war of 1914-1918. Furthermore, the antipathy to the Jews was intensified by the insistence which was laid upon the superiority of the Germanic race and blood. The second chapter of Book 1 of *Mein Kampf* is dedicated to what may be called the "Master Race" theory, the doctrine of Aryan superiority over all other races, and the right of Germans, in virtue of this superiority, to dominate and use other peoples for their own ends. With the coming of the Nazis into power in 1933, persecution of the Jews became official state policy. On 1 April 1933, a boycott of Jewish enterprises was approved by the Nazi Reich Cabinet, and during the following years a series of anti-Semitic laws were passed, restricting the activities of Jews in the Civil Service, in the legal profession, in journalism and in the Armed Forces. In September 1935, the so-called Nuremberg Laws were passed, the most important effect of which was to deprive Jews of German citizenship. In this way the influence of Jewish elements on the affairs of Germany was extinguished, and one more potential source of opposition to Nazi policy was rendered powerless.

In any consideration of the crushing of opposition, the massacre of 30 June 1934 must not be forgotten. It has become known as the "Röhm Purge" or "the blood bath," and revealed the methods which Hitler and his immediate associates, including the Defendant Göring, were ready to employ to strike down all opposition and consolidate their power. On that day Röhm, the Chief of Staff of the SA since 1931, was murdered by Hitler's orders, and the "Old Guard" of the SA was massacred without trial and without warning. The opportunity was taken to murder a large number of people who at one time or another had opposed Hitler.

The ostensible ground for the murder of Röhm was that he was plotting to overthrow Hitler, and the Defendant Göring gave evidence that knowledge of such a plot had come to his ears. Whether this was so or not it is not necessary to determine.

On 3 July the Cabinet approved Hitler's action and described it as "legitimate self-defense by the State."

Shortly afterwards Hindenburg died, and Hitler became both Reich President and Chancellor. At the Nazi-dominated plebiscite which followed, 38 million Germans expressed their approval, and with the Reichswehr taking the oath of allegiance to the Führer, full power was now in Hitler's hands.

Germany had accepted the dictatorship with all its methods of terror, and its cynical and open denial of the rule of law.

Apart from the policy of crushing the potential opponents of their regime, the Nazi Government took active steps to increase its power over the German population. In the field of education, everything was done to ensure that the youth of Germany was brought up in the atmosphere of National Socialism and accepted National Socialist teachings. As early as 7 April 1933 the law reorganizing the Civil Service had made it possible for the Nazi Government to remove all "subversive and unreliable teachers"; and this was followed by numerous other measures to make sure that the schools were staffed by teachers who could be trusted to teach their pupils the full meaning of the National Socialist creed. Apart from the influence of National Socialist teaching in the schools, the Hitler Youth Organization was also relied upon by the Nazi leaders for obtaining fanatical support from the younger generation. The Defendant Von Schirach, who had been Reich Youth Leader of the NSDAP since 1931, was appointed Youth Leader of the German Reich in June 1933. Soon all the youth organizations had been either dissolved or absorbed by the Hitler Youth, with the exception of the Catholic Youth. The Hitler Youth was organized on strict military lines, and as early as 1933 the Wehrmacht was co-operating in providing premilitary training for the Reich Youth.

The Nazi Government endeavored to unite the nation in support of their policies through the extensive use of propaganda. A number of agencies were set up whose duty was to control and influence the press, the radio, films, publishing firms, *et cetera*, in Germany, and to supervise entertainment and cultural and artistic activities. All these agencies came under Goebbels' Ministry of the People's Enlightenment and Propaganda, which together with a corresponding organization in the NSDAP and the Reich Chamber of Culture, was ultimately responsible for exercising this supervision. The Defendant Rosenberg played a leading part in disseminating the National Socialist doctrines on behalf of the Party, and the Defendant Fritzsche, in conjunction with Goebbels, performed the same task for the State.

The greatest emphasis was laid on the supreme mission of the German people to lead and dominate by virtue of their Nordic blood

and racial purity; and the ground was thus being prepared for the acceptance of the idea of German world supremacy.

Through the effective control of the radio and the press, the German people, during the years which followed 1933, were subjected to the most intensive propaganda in furtherance of the regime. Hostile criticism, indeed criticism of any kind, was forbidden, and the severest penalties were imposed on those who indulged in it.

Independent judgment, based on freedom of thought, was rendered quite impossible.

Measures of Rearmament

During the years immediately following Hitler's appointment as Chancellor, the Nazi Government set about reorganizing the economic life of Germany, and in particular the armament industry. This was done on a vast scale and with extreme thoroughness.

It was necessary to lay a secure financial foundation for the building of armaments, and in April 1936 the Defendant Göring was appointed co-ordinator for raw materials and foreign exchange, and empowered to supervise all State and Party activities in these fields. In this capacity he brought together the War Minister, the Minister of Economics, the Reich Finance Minister, the President of the Reichsbank, and the Prussian Finance Minister to discuss problems connected with war mobilization, and on the 27th of May 1936, in addressing these men, Göring opposed any financial limitation of war production and added that "all measures are to be considered from the standpoint of an assured waging of war." At the Party Rally in Nuremberg in 1936, Hitler announced the establishment of the Four Year Plan and the appointment of Göring as the plenipotentiary in charge. Göring was already engaged in building a strong air force and on 8 July 1938 he announced to a number of leading German aircraft manufacturers that the German Air Force was already superior in quality and quantity to the English. On the 14th of October 1938, at another conference, Göring announced that Hitler had instructed him to organize a gigantic armament program, which would make insignificant all previous achievements. He said that he had been ordered to build as rapidly as possible an air force five times as large as originally planned, to increase the speed of the rearmament of the Navy and Army, and to concentrate on offensive weapons, principally heavy artillery and heavy tanks. He then laid down a specific program designed to accomplish these ends. The extent to which rearmament had

been accomplished was stated by Hitler in his memorandum of the 9th of October 1939, after the campaign in Poland. He said:

> "The military application of our people's strength has been carried through to such an extent that within a short time at any rate it cannot be markedly improved upon by any manner of effort....
>
> "The warlike equipment of the German people is at present larger in quantity and better in quality for a greater number of German divisions than in the year 1914. The weapons themselves, taking a substantial cross-section, are more modern than is the case with any other country in the world at this time. They have just proved their supreme war-worthiness in their victorious campaign.... There is no evidence available to show that any country in the world disposes of a better total ammunition stock than the Reich.... The A.A. artillery is not equalled by any country in the world."

In this reorganization of the economic life of Germany for military purposes, the Nazi Government found the German armament industry quite willing to co-operate and to play its part in the rearmament program. In April 1933, Gustav Krupp von Bohlen submitted to Hitler on behalf of the Reich Association of German Industry a plan for the reorganization of German industry, which he stated was characterized by the desire to co-ordinate economic measures and political necessity. In the plan itself, Krupp stated that "the turn of political events is in line with the wishes which I myself and the board of directors have cherished for a long time." What Krupp meant by this statement is fully shown by the draft text of a speech which he planned to deliver in the University of Berlin in January 1944, though the speech was in fact never delivered. Referring to the years 1919 to 1933, Krupp wrote:

> "It is the one great merit of the entire German war economy that it did not remain idle during those bad years, even though its activity could not be brought to light, for obvious reasons. Through years of secret work, scientific and basic groundwork was laid in order to be ready again to work for the German Armed Forces at the appointed hour, without loss of time or experience.... Only through the secret activity of German enterprise together with the experience gained meanwhile through the production of peacetime goods, was it possible after 1933 to fall into step with the new tasks arrived at, restoring Germany's military power."

In October 1933 Germany withdrew from the International Disarmament Conference and the League of Nations. In 1935 the Nazi Government decided to take the first open steps to free itself

from its obligations under the Treaty of Versailles. On 10 March 1935 the Defendant Göring announced that Germany was building a military air force. Six days later, on 16 March 1935, a law was passed bearing the signatures, among others, of the Defendants Göring, Hess, Frank, Frick, Schacht, and Von Neurath, instituting compulsory military service and fixing the establishment of the German Army at a peacetime strength of 500,000 men. In an endeavor to reassure public opinion in other countries, the Government announced on 21 May 1935 that Germany would, though renouncing the disarmament clauses, still respect the territorial limitations of the Versailles Treaty, and would comply with the Locarno Pacts. Nevertheless, on the very day of this announcement, the secret Reich Defense Law was passed and its publication forbidden by Hitler. In this law, the powers and duties of the Chancellor and other Ministers were defined, should Germany become involved in war. It is clear from this law that by May of 1935 Hitler and his Government had arrived at the stage in the carrying out of their policies when it was necessary for them to have in existence the requisite machinery for the administration and government of Germany in the event of their policy leading to war.

At the same time that this preparation of the German economy for war was being carried out, the German Armed Forces themselves were preparing for a rebuilding of Germany's armed strength.

The German Navy was particularly active in this regard. The official German Naval historians, Assmann and Gladisch, admit that the Treaty of Versailles had only been in force for a few months before it was violated, particularly in the construction of a new submarine arm.

The publications of Captain Schüssler and Oberst Scherff, both of which were sponsored by the Defendant Raeder, were designed to show the German people the nature of the Navy's effort to rearm in defiance of the Treaty of Versailles.

The full details of these publications have been given in evidence.

On 12 May 1934 the Defendant Raeder issued the top-secret armament plan for what was called the "Third Armament Phase." This contained the sentence:

> "All theoretical and practical A-preparations[2]) are to be drawn up with a primary view to readiness for a war *without any alert period.*"

One month later, in June 1934, the Defendant Raeder had a conversation with Hitler in which Hitler instructed him to keep secret the construction of U-boats and of warships over the limit of 10,000 tons which was then being undertaken.

And on 2 November 1934, the Defendant Raeder had another conversation with Hitler and the Defendant Göring, in which Hitler

said that he considered it vital that the German Navy "should be increased as planned, as no war could be carried on if the Navy was not able to safeguard the ore imports from Scandinavia."

The large orders for building given in 1933 and 1934 are sought to be excused by the Defendant Raeder on the ground that negotiations were in progress for an agreement between Germany and Great Britain, permitting Germany to build ships in excess of the provisions of the Treaty of Versailles. This agreement, which was signed in 1935, restricted the German Navy to a tonnage equal to one-third of that of the British, except in respect of U-boats where 45 percent was agreed, subject always to the right to exceed this proportion after first informing the British Government and giving them an opportunity of discussion.

The Anglo-German Treaty followed in 1937, under which both powers bound themselves to notify full details of their building program at least 4 months before any action was taken.

It is admitted that these clauses were not adhered to by Germany.

In capital vessels, for example, the displacement details were falsified by 20 percent, whilst in the case of U-boats, the German historians Assmann and Gladisch say:

> "It is probably just in the sphere of submarine construction that Germany adhered the least to the restrictions of the German-British Treaty."

The importance of these breaches of the Treaty is seen when the motive for this rearmament is considered. In the year 1940 the Defendant Raeder himself wrote:

> "The Führer hoped until the last moment to be able to put off the threatening conflict with England until 1944-45. At that time, the Navy would have had available a fleet with a powerful U-boat superiority, and a much more favorable ratio as regards strength in all other types of ships, particularly those designed for warfare on the high seas."

The Nazi Government, as already stated, announced on 21 May 1935 their intention to respect the territorial limitations of the Treaty of Versailles. On 7 March 1936, in defiance of that Treaty, the demilitarized zone of the Rhineland was entered by German troops. In announcing this action to the German Reichstag, Hitler endeavored to justify the re-entry by references to the recently concluded alliances between France and the Soviet Union, and between Czechoslovakia and the Soviet Union. He also tried to meet the hostile reaction which he no doubt expected to follow this violation of the Treaty by saying: "We have no territorial claims to make in Europe."

The Common Plan or Conspiracy and Aggressive War

The Tribunal now turns to the consideration of the Crimes against Peace charged in the Indictment. Count One of the Indictment charges the defendants with conspiring or having a common plan to commit crimes against peace. Count Two of the Indictment charges the defendants with committing specific crimes against peace by planning, preparing, initiating, and waging wars of aggression against a number of other states. It will be convenient to consider the question of the existence of a common plan and the question of aggressive war together, and to deal later in this Judgment with the question of the individual responsibility of the defendants.

The charges in the Indictment that the defendants planned and waged aggressive wars are charges of the utmost gravity. War is essentially an evil thing. Its consequences are not confined to the belligerent states alone, but affect the whole world.

To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.

The first acts of aggression referred to in the Indictment are the seizure of Austria and Czechoslovakia; and the first war of aggression charged in the Indictment is the war against Poland begun on 1 September 1939.

Before examining that charge it is necessary to look more closely at some of the events which preceded these acts of aggression. The war against Poland did not come suddenly out of an otherwise clear sky; the evidence has made it plain that this war of aggression, as well as the seizure of Austria and Czechoslovakia, was premeditated and carefully prepared, and was not undertaken until the moment was thought opportune for it to be carried through as a definite part of the preordained scheme and plan.

For the aggressive designs of the Nazi Government were not accidents arising out of the immediate political situation in Europe and the world; they were a deliberate and essential part of Nazi foreign policy.

From the beginning, the National Socialist movement claimed that its object was to unite the German people in the consciousness of their mission and destiny, based on inherent qualities of race, and under the guidance of the Führer.

For its achievement, two things were deemed to be essential; the disruption of the European order as it had existed since the Treaty of Versailles, and the creation of a Greater Germany beyond the

frontiers of 1914. This necessarily involved the seizure of foreign territories.

War was seen to be inevitable, or at the very least, highly probable, if these purposes were to be accomplished. The German people, therefore, with all their resources, were to be organized as a great political-military army, schooled to obey without question any policy decreed by the State.

Preparation for Aggression

In *Mein Kampf* Hitler had made this view quite plain. It must be remembered that *Mein Kampf* was no mere private diary in which the secret thoughts of Hitler were set down. Its contents were rather proclaimed from the housetops. It was used in the schools and universities and among the Hitler Youth, in the SS and the SA, and among the German people generally, even down to the presentation of an official copy to all newly-married people. By the year 1945 over 6½ million copies had been circulated. The general contents are well-known. Over and over again Hitler asserted his belief in the necessity of force as the means of solving international problems, as in the following quotation:

> "The soil on which we now live was not a gift bestowed by Heaven on our forefathers. They had to conquer it by risking their lives. So also in the future our people will not obtain territory, and therewith the means of existence, as a favor from any other people, but will have to win it by the power of a triumphant sword."

Mein Kampf contains many such passages, and the extolling of force as an instrument of foreign policy is openly proclaimed.

The precise objectives of this policy of force are also set forth in detail. The very first page of the book asserts that "German-Austria must be restored to the great German Motherland," not on economic grounds, but because "people of the same blood should be in the same Reich."

The restoration of the German frontiers of 1914 is declared to be wholly insufficient, and if Germany is to exist at all, it must be as a world power with the necessary territorial magnitude.

Mein Kampf is quite explicit in stating where the increased territory is to be found:

> "Therefore we National Socialists have purposely drawn a line through the line of conduct followed by prewar Germany in foreign policy. . . . We put an end to the perpetual Germanic march towards the South and West of Europe, and turn our eyes towards the lands of the East. We finally put a stop to

the colonial and trade policy of the prewar times, and pass over to the territorial policy of the future.

"But when we speak of new territory in Europe today, we must think principally of Russia and the border states subject to her."

Mein Kampf is not to be regarded as a mere literary exercise, nor as an inflexible policy or plan incapable of modification.

Its importance lies in the unmistakable attitude of aggression revealed throughout its pages.

The Planning of Aggression

Evidence from captured documents has revealed that Hitler held four secret meetings to which the Tribunal proposes to make special reference because of the light they shed upon the question of the common plan and aggressive war.

These meetings took place on 5 November 1937, 23 May 1939, 22 August 1939, and 23 November 1939.

At these meetings important declarations were made by Hitler as to his purposes, which are quite unmistakable in their terms.

The documents which record what took place at these meetings have been subject to some criticism at the hands of defending counsel.

Their essential authenticity is not denied, but it is said, for example, that they do not purport to be verbatim transcripts of the speeches they record, that the document dealing with the meeting on 5 November 1937 was dated 5 days after the meeting had taken place, and that the two documents dealing with the meeting of 22 August 1939 differ from one another and are unsigned.

Making the fullest allowance for criticism of this kind, the Tribunal is of the opinion that the documents are documents of the highest value, and that their authenticity and substantial truth are established.

They are obviously careful records of the events they describe, and they have been preserved as such in the archives of the German Government, from whose custody they were captured. Such documents could never be dismissed as inventions, nor even as inaccurate or distorted; they plainly record events which actually took place.

Conferences of 23 November 1939 and 5 November 1937

It will perhaps be useful to deal first of all with the meeting of 23 November 1939, when Hitler called his supreme commanders together. A record was made of what was said, by one of those present. At the date of the meeting, Austria and Czechoslovakia

had been incorporated into the German Reich, Poland had been conquered by the German armies, and the war with Great Britain and France was still in its static phase. The moment was opportune for a review of past events. Hitler informed the commanders that the purpose of the conference was to give them an idea of the world of his thoughts, and to tell them his decision. He thereupon reviewed his political task since 1919, and referred to the secession of Germany from the League of Nations, the denunciation of the Disarmament Conference, the order for rearmament, the introduction of compulsory armed service, the occupation of the Rhineland, the seizure of Austria, and the action against Czechoslovakia. He stated:

> "One year later, Austria came; this step also was considered doubtful. It brought about a considerable reinforcement of the Reich. The next step was Bohemia, Moravia, and Poland. This step also was not possible to accomplish in one campaign. First of all, the western fortification had to be finished. It was not possible to reach the goal in one effort. It was clear to me from the first moment that I could not be satisfied with the Sudeten German territory. That was only a partial solution. The decision to march into Bohemia was made. Then followed the erection of the Protectorate and with that the basis for the action against Poland was laid, but I was not quite clear at that time whether I should start first against the East and then in the West or vice versa.... Basically I did not organize the Armed Forces in order not to strike. The decision to strike was always in me. Earlier or later I wanted to solve the problem. Under pressure it was decided that the East was to be attacked first."

This address, reviewing past events and reaffirming the aggressive intentions present from the beginning, puts beyond any question of doubt the character of the actions against Austria and Czechoslovakia, and the war against Poland.

For they had all been accomplished according to plan; and the nature of that plan must now be examined in a little more detail.

At the meeting of 23 November 1939 Hitler was looking back to things accomplished; at the earlier meetings now to be considered, he was looking forward, and revealing his plans to his confederates. The comparison is instructive.

The meeting held at the Reich Chancellery in Berlin on 5 November 1937 was attended by Lt. Col. Hossbach, Hitler's personal adjutant, who compiled a long note of the proceedings, which he dated 10 November 1937 and signed.

The persons present were Hitler, and the Defendants Göring, Von Neurath and Raeder, in their capacities as Commander-in-Chief

of the Luftwaffe, Reich Foreign Minister, and Commander-in-Chief of the Navy respectively, General Von Blomberg, Minister of War, and General Von Fritsch, the Commander-in-Chief of the Army.

Hitler began by saying that the subject of the conference was of such high importance that in other states it would have taken place before the Cabinet. He went on to say that the subject matter of his speech was the result of his detailed deliberations, and of his experiences during his four and a half years of government. He requested that the statements he was about to make should be looked upon in the case of his death as his last will and testament. Hitler's main theme was the problem of living space, and he discussed various possible solutions, only to set them aside. He then said that the seizure of living space on the continent of Europe was therefore necessary, expressing himself in these words:

> "It is not a case of conquering people but of conquering agriculturally useful space. It would also be more to the purpose to seek raw-material-producing territory in Europe directly adjoining the Reich and not overseas, and this solution would have to be brought into effect for one or two generations.... The history of all times—Roman Empire, British Empire—has proved that every space expansion can only be effected by breaking resistance and taking risks. Even setbacks are unavoidable: neither formerly nor today has space been found without an owner; the attacker always comes up against the proprietor."

He concluded with this observation:

> "The question for Germany is where the greatest possible conquest could be made at the lowest cost."

Nothing could indicate more plainly the aggressive intentions of Hitler, and the events which soon followed showed the reality of his purpose. It is impossible to accept the contention that Hitler did not actually mean war; for after pointing out that Germany might expect the opposition of England and France, and analyzing the strength and the weakness of those powers in particular situations, he continued:

> "The German question can be solved only by way of force, and this is never without risk... If we place the decision to apply force with risk at the head of the following expositions, then we are left to reply to the questions 'when' and 'how.' In this regard we have to decide upon three different cases."

The first of these three cases set forth a hypothetical international situation, in which he would take action not later than 1943 to 1945, saying:

> "If the Führer is still living then it will be his irrevocable decision to solve the German space problem not later than

1943 to 1945. The necessity for action before 1943 to 1945 will come under consideration in Cases 2 and 3."

The second and third cases to which Hitler referred show the plain intention to seize Austria and Czechoslovakia, and in this connection Hitler said:

"For the improvement of our military-political position, it must be our first aim in every case of entanglement by war to conquer Czechoslovakia and Austria simultaneously in order to remove any threat from the flanks in case of a possible advance westwards."

He further added:

"The annexation of the two states to Germany militarily and politically would constitute a considerable relief, owing to shorter and better frontiers, the freeing of fighting personnel for other purposes, and the possibility of reconstituting new armies up to a strength of about twelve divisions."

This decision to seize Austria and Czechoslovakia was discussed in some detail; the action was to be taken as soon as a favorable opportunity presented itself.

The military strength which Germany had been building up since 1933 was now to be directed at the two specific countries, Austria and Czechoslovakia.

The Defendant Göring testified that he did not believe at that time that Hitler actually meant to attack Austria and Czechoslovakia, and that the purpose of the conference was only to put pressure on Von Fritsch to speed up the rearmament of the Army.

The Defendant Raeder testified that neither he, nor Von Fritsch, nor Von Blomberg, believed that Hitler actually meant war, a conviction which the Defendant Raeder claims that he held up to 22 August 1939. The basis of this conviction was his hope that Hitler would obtain a "political solution" of Germany's problems. But all that this means, when examined, is the belief that Germany's position would be so good, and Germany's armed might so overwhelming, that the territory desired could be obtained without fighting for it. It must be remembered too that Hitler's declared intention with regard to Austria was actually carried out within a little over four months from the date of the meeting, and within less than a year the first portion of Czechoslovakia was absorbed, and Bohemia and Moravia a few months later. If any doubts had existed in the minds of any of his hearers in November 1937, after March of 1939 there could no longer be any question that Hitler was in deadly earnest in his decision to resort to war. The Tribunal is satisfied that Lt. Col. Hossbach's account of the meeting is substantially correct, and that those present knew that Austria and

Czechoslovakia would be annexed by Germany at the first possible opportunity.

THE PRESIDENT: The Tribunal will now adjourn for 10 minutes.

[A recess was taken.]

THE PRESIDENT: I will now ask M. Donnedieu de Vabres to continue the reading of the Judgment.

M. LE PROFESSEUR DONNEDIEU DE VABRES (Member of the Tribunal for the French Republic):

The Seizure of Austria

The invasion of Austria was a premeditated aggressive step in furthering the plan to wage aggressive wars against other countries. As a result Germany's flank was protected, that of Czechoslovakia being greatly weakened. The first step had been taken in the seizure of "Lebensraum"; many new divisions of trained fighting men had been acquired; and with the seizure of foreign exchange reserves, the rearmament program had been greatly strengthened.

On 21 May 1935 Hitler announced in the Reichstag that Germany did not intend either to attack Austria or to interfere in her internal affairs.

On 1 May 1936 he publicly coupled Czechoslovakia with Austria in his avowal of peaceful intentions; and so late as 11 July 1936 he recognized by treaty the full sovereignty of Austria.

Austria was in fact seized by Germany in the month of March 1938. For a number of years before that date, the National Socialists in Germany had been co-operating with the National Socialists of Austria with the ultimate object of incorporating Austria into the German Reich. The Putsch of 25 July 1934, which resulted in the assassination of Chancellor Dollfuss, had the seizure of Austria as its object; but the Putsch failed, with the consequence that the National Socialist Party was outlawed in Austria. On 11 July 1936 an agreement was entered into between the two countries, Article 1 of which stated:

> "The German Government recognizes the full sovereignty of the Federated State of Austria in the spirit of the pronouncements of the German Führer and Chancellor of the 21st May 1935."

Article 2 declared:

> "Each of the two Governments regards the inner political order (including the question of Austrian National Socialism) obtaining in the other country as an internal affair of the

other country, upon which it will exercise neither direct nor indirect influence."

The National Socialist movement in Austria however continued its illegal activities under cover of secrecy; and the National Socialists of Germany gave the party active support. The resulting "incidents" were seized upon by the German National Socialists as an excuse for interfering in Austrian affairs. After the conference of 5 November 1937, these "incidents" rapidly multiplied. The relationship between the two countries steadily worsened, and finally the Austrian Chancellor Schuschnigg was persuaded by the Defendant Von Papen and others to seek a conference with Hitler, which took place at Berchtesgaden on 12 February 1938. The Defendant Keitel was present at the conference, and Dr. Schuschnigg was threatened by Hitler with an immediate invasion of Austria. Schuschnigg finally agreed to grant a political amnesty to various Nazis convicted of crime, and to appoint the Nazi Seyss-Inquart as Minister of the Interior and Security with control of the Police. On 9 March 1938, in an attempt to preserve the independence of his country, Dr. Schuschnigg decided to hold a plebiscite on the question of Austrian independence, which was fixed for 13 March 1938. Hitler, 2 days later, sent an ultimatum to Schuschnigg that the plebiscite must be withdrawn. In the afternoon and evening of 11 March 1938 the Defendant Göring made a series of demands upon the Austrian Government, each backed up by threat of invasion. After Schuschnigg had agreed to the cancellation of the plebiscite, another demand was put forward that Schuschnigg must resign, and that the Defendant Seyss-Inquart should be appointed Chancellor. In consequence, Schuschnigg resigned, and President Miklas, after at first refusing to appoint Seyss-Inquart as Chancellor, gave way and appointed him.

Meanwhile Hitler had given the final order for the German troops to cross the border at dawn on 12 March and instructed Seyss-Inquart to use formations of Austrian National Socialists to depose Miklas and to seize control of the Austrian Government. After the order to march had been given to the German troops, Göring telephoned the German Embassy in Vienna and dictated a telegram which he wished Seyss-Inquart to send to Hitler to justify the military action which had already been ordered.

It was:

"The provisional Austrian Government, which, after the dismissal of the Schuschnigg Government, considers its task to establish peace and order in Austria, sends to the German Government the urgent request to support it in its task and to help it to prevent bloodshed. For this purpose it asks the

German Government to send German troops as soon as possible."

Keppler, an official of the German Embassy, replied:

"Well, SA and SS are marching through the streets, but everything is quiet."

After some further discussion, Göring stated:

"Please show him (Seyss-Inquart) the text of the telegram, and tell him that we are asking him—well, he does not even have to send the telegram. All he needs to do is to say 'Agreed'."

Seyss-Inquart never sent the telegram; he never even telegraphed "Agreed."

It appears that as soon as he was appointed Chancellor, some time after 10 p.m., he called Keppler and told him to call up Hitler and transmit his protests against the occupation. This action outraged the Defendant Göring, because "it would disturb the rest of the Führer, who wanted to go to Austria the next day." At 11:15 p.m. an official in the Ministry of Propaganda in Berlin telephoned the German Embassy in Vienna and was told by Keppler: "Tell the General Field Marshal that Seyss-Inquart agrees."

At daybreak on 12 March 1938 German troops marched into Austria and met with no resistance. It was announced in the German press that Seyss-Inquart had been appointed the successor to Schuschnigg, and the telegram which Göring had suggested, but which was never sent, was quoted to show that Seyss-Inquart had requested the presence of German troops to prevent disorder. On 13 March 1938 a law was passed for the reunion of Austria in the German Reich. Seyss-Inquart demanded that President Miklas should sign this law, but he refused to do so, and resigned his office. He was succeeded by Seyss-Inquart, who signed the law in the name of Austria. This law was then adopted as a law of the Reich by a Reich Cabinet decree issued the same day, and signed by Hitler and Defendants Göring, Frick, Von Ribbentrop, and Hess.

It was contended before the Tribunal that the annexation of Austria was justified by the strong desire expressed in many quarters for the union of Austria and Germany; that there were many matters in common between the two peoples that made this union desirable; and that in the result the object was achieved without bloodshed.

These matters, even if true, are really immaterial, for the facts plainly prove that the methods employed to achieve the object were those of an aggressor. The ultimate factor was the armed might of Germany ready to be used if any resistance was encountered. Moreover, none of these considerations appear from the Hossbach

account of the meetings of 5 November 1937 to have been the motives which actuated Hitler; on the contrary, all the emphasis is there laid on the advantage to be gained by Germany in her military strength by the annexation of Austria.

The Seizure of Czechoslovakia

The conference of 5 November 1937 made it quite plain that the seizure of Czechoslovakia by Germany had been definitely decided upon. The only question remaining was the selection of the suitable moment to do it. On 4 March 1938 the Defendant Ribbentrop wrote to the Defendant Keitel with regard to a suggestion made to Ribbentrop by the Hungarian Minister in Berlin, that possible war aims against Czechoslovakia should be discussed between the German and Hungarian armies. In the course of this letter Ribbentrop said:

> "I have many doubts about such negotiations. In case we should discuss with Hungary possible war aims against Czechoslovakia, the danger exists that other parties as well would be informed about this."

On the 11th March 1938 Göring made two separate statements to M. Mastny, the Czechoslovak Minister in Berlin, assuring him that the developments then taking place in Austria would in no way have any detrimental influence on the relations between the German Reich and Czechoslovakia, and emphasized the continued earnest endeavor on the part of the Germans to improve those mutual relations. On the 12th March, Göring asked M. Mastny to call on him, and repeated these assurances.

This design to keep Czechoslovakia quiet whilst Austria was absorbed was a typical maneuver on the part of the Defendant Göring, which he was to repeat later in the case of Poland, when he made the most strenuous efforts to isolate Poland in the impending struggle. On the same day, 12 March, the Defendant Von Neurath spoke with M. Mastny, and assured him on behalf of Hitler that Germany still considered herself bound by the German Czechoslovak Arbitration Convention concluded at Locarno in October 1925.

The evidence shows that after the occupation of Austria by the German Army on 12 March, and the annexation of Austria on 13 March, Konrad Henlein, who was the leader of the Sudeten German Party in Czechoslovakia, saw Hitler in Berlin on 28 March. On the following day, at a conference in Berlin, when Ribbentrop was present with Henlein, the general situation was discussed, and later the Defendant Jodl recorded in his diary:

> "After the annexation of Austria the Führer mentions that there is no hurry to solve the Czech question, because

Austria has to be digested first. Nevertheless, preparations for Case Grün (that is, the plan against Czechoslovakia) will have to be carried out energetically; they will have to be newly prepared on the basis of the changed strategic position because of the annexation of Austria."

On 21 April 1938 a discussion took place between Hitler and the Defendant Keitel with regard to "Case Grün," showing quite clearly that the preparations for the attack on Czechoslovakia were being fully considered. On 28 May 1938 Hitler ordered that preparations should be made for military action against Czechoslovakia by 2 October, and from then onwards the plan to invade Czechoslovakia was constantly under review. On 30 May 1938 a directive signed by Hitler declared his "unalterable decision to smash Czechoslovakia by military action in the near future."

In June 1938, as appears from a captured document taken from the files of the SD in Berlin, an elaborate plan for the employment of the SD in Czechoslovakia had been proposed. This plan provided that "the SD follow, if possible, immediately after the leading troops, and take upon themselves the duties similar to their tasks in Germany. . . ."

Gestapo officials were assigned to co-operate with the SD in certain operations. Special agents were to be trained beforehand to prevent sabotage, and these agents were to be notified "before the attack in due time . . . in order to give them the possibility to hide themselves, avoid arrest and deportation. . . ."

"At the beginning, guerilla or partisan warfare is to be expected, therefore weapons are necessary. . . ."

Files of information were to be compiled with notations as follows: "To arrest" . . . "To liquidate" . . . "To confiscate" . . . "To deprive of passport" *et cetera.*

The plan provided for the temporary division of the country into larger and smaller territorial units, and considered various "suggestions," as they were termed, for the incorporation into the German Reich of the inhabitants and districts of Czechoslovakia. The final "suggestion" included the whole country, together with Slovakia and Carpathian Russia, with a population of nearly 15 millions.

The plan was modified in some respects in September after the Munich Conference, but the fact that the plan existed in such exact detail and was couched in such warlike language indicated a calculated design to resort to force.

On 31 August 1938 Hitler approved a memorandum by Jodl dated 24 August 1938, concerning the timing of the order for the

invasion of Czechoslovakia and the question of defense measures. This memorandum contained the following:

> "Operation Grün will be set in motion by means of an 'incident' in Czechoslovakia, which will give Germany provocation for military intervention. The fixing of the *exact time* for this incident is of the utmost importance."

These facts demonstrate that the occupation of Czechoslovakia had been planned in detail long before the Munich Conference.

In the month of September 1938 the conferences and talks with military leaders continued. In view of the extraordinarily critical situation which had arisen, the British Prime Minister, Mr. Chamberlain, flew to Munich and then went to Berchtesgaden to see Hitler. On 22 September Mr. Chamberlain met Hitler for further discussions at Bad Godesberg. On 26 September 1938 Hitler said in a speech in Berlin, with reference to his conversation:

> "I assured him, moreover, and I repeat it here, that when this problem is solved there will be no more territorial problems for Germany in Europe; and I further assured him that from the moment when Czechoslovakia solves its other problems, that is to say, when the Czechs have come to an arrangement with their other minorities, peacefully and without oppression, I will be no longer interested in the Czech State, and that as far as I am concerned I will guarantee it. We do not want any Czechs."

On the 29th September 1938, after a conference between Hitler and Mussolini and the British and French Prime Ministers in Munich, the Munich Pact was signed, by which Czechoslovakia was required to acquiesce in the cession of the Sudetenland to Germany. The "piece of paper" which the British Prime Minister brought back to London, signed by himself and Hitler, expressed the hope that for the future Britain and Germany might live without war. That Hitler never intended to adhere to the Munich Agreement is shown by the fact that a little later he asked the Defendant Keitel for information with regard to the military force which in his opinion would be required to break all Czech resistance in Bohemia and Moravia. Keitel gave his reply on 11 October 1938. On 21 October 1938 a directive was issued by Hitler, and countersigned by the Defendant Keitel, to the Armed Forces on their future tasks, which stated:

> "Liquidation of the remainder of Czechoslovakia. It must be possible to smash at any time the remainder of Czechoslovakia if her policy should become hostile towards Germany."

It is not necessary to review the evidence of the months which immediately followed. On 14 March 1939 the Czech President Hacha

and his Foreign Minister Chvalkovsky came to Berlin at the suggestion of Hitler, and attended a meeting at which the Defendants Ribbentrop, Göring, and Keitel were present with others. The proposal was made to Hacha that if he would sign an agreement consenting to the incorporation of the Czech people in the German Reich at once, Bohemia and Moravia would be saved from destruction. He was informed that German troops had already received orders to march and that any resistance would be broken with physical force. The Defendant Göring added the threat that he would destroy Prague completely from the air. Faced by this dreadful alternative, Hacha and his Foreign Minister put their signatures to the necessary agreement at 4:30 in the morning, and Hitler and Ribbentrop signed on behalf of Germany.

On 15 March German troops occupied Bohemia and Moravia, and on 16 March the German decree was issued incorporating Bohemia and Moravia in the Reich as a protectorate, and this decree was signed by the Defendants Ribbentrop and Frick.

The Aggression against Poland

By March 1939 the plan to annex Austria and Czechoslovakia, which had been discussed by Hitler at the meeting of 5 November 1937, had been accomplished. The time had now come for the German leaders to consider further acts of aggression, made more possible of attainment because of that accomplishment.

On 23 May 1939 a meeting was held in Hitler's study in the new Reich Chancellery in Berlin. Hitler announced his decision to attack Poland and gave his reasons, and discussed the effect the decision might have on other countries. In point of time, this was the second of the important meetings to which reference has already been made, and in order to appreciate the full significance of what was said and done, it is necessary to state shortly some of the main events in the history of German-Polish relations.

As long ago as the year 1925 an Arbitration Treaty between Germany and Poland had been made at Locarno, providing for the settlement of all disputes between the two countries. On 26 January 1934, a German-Polish declaration of non-aggression was made, signed on behalf of the German Government by the Defendant Von Neurath. On 30 January 1934, and again on 30 January 1937, Hitler made speeches in the Reichstag in which he expressed his view that Poland and Germany could work together in harmony and peace. On 20 February 1938 Hitler made a third speech in the Reichstag in the course of which he said with regard to Poland:

"And so the way to a friendly understanding has been successfully paved, an understanding which, beginning with

Danzig, has today, in spite of the attempts of certain mischief-makers, succeeded in finally taking the poison out of the relations between Germany and Poland and transforming them into a sincere, friendly co-operation. Relying on her friendships, Germany will not leave a stone unturned to save that ideal which provides the foundation for the task which is ahead of us—peace."

On 26 September 1938, in the middle of the crisis over the Sudetenland, Hitler made the speech in Berlin which has already been quoted, and announced that he had informed the British Prime Minister that when the Czechoslovakian problem was solved there would be no more territorial problems for Germany in Europe. Nevertheless, on 24 November of the same year, an OKW directive was issued to the German Armed Forces to make preparations for an attack upon Danzig; it stated:

"The Führer has ordered:

(1) ... preparations are also to be made to enable the Free State of Danzig to be occupied by German troops by surprise."

In spite of having ordered military preparations for the occupation of Danzig, Hitler, on 30 January 1939, said in a speech in the Reichstag:

"During the troubled months of the past year, the friendship between Germany and Poland has been one of the most reassuring factors in the political life of Europe."

Five days previously, on 25 January 1939, Ribbentrop said in the course of a speech in Warsaw:

"Thus Poland and Germany can look forward to the future with full confidence in the solid basis of their mutual relations."

Following on the occupation of Bohemia and Moravia by Germany on 15 March 1939, which was a flagrant breach of the Munich Agreement, Great Britain gave an assurance to Poland on 31 March 1939 that in the event of any action which clearly threatened Polish independence, and which the Polish Government accordingly considered it vital to resist with their national forces, Great Britain would feel itself bound at once to lend Poland all the support in its power. The French Government took the same stand. It is interesting to note in this connection that one of the arguments frequently presented by the Defense in the present case is that the defendants were influenced to think that their conduct was not in breach of international law by the acquiescence of other powers. The declarations of Great Britain and France showed, at least, that this view could be held no longer.

On 3 April 1939 a revised OKW directive was issued to the Armed Forces, which after referring to the question of Danzig made reference to Fall Weiss (the military code name for the German invasion of Poland) and stated:

"The Führer has added the following directions to Fall Weiss:

(1) Preparations must be made in such a way that the operation can be carried out at any time from 1 September 1939 onwards.

(2) The High Command of the Armed Forces has been directed to draw up a precise timetable for Fall Weiss and to arrange by conferences the synchronized timings between the three branches of the Armed Forces."

On 11 April 1939, a further directive was signed by Hitler and issued to the Armed Forces, and in one of the annexes to that document the words occur:

"Quarrels"—with Poland—"should be avoided. Should Poland... however adopt a threatening attitude towards Germany, 'a final settlement' will be necessary, notwithstanding the pact with Poland. The aim is then to destroy Polish military strength, and to create in the East a situation which satisfies the requirements of defense. The Free State of Danzig will be incorporated into Germany at the outbreak of the conflict at the latest. Policy aims... at limiting the war to Poland, and this is considered possible in view of the internal crisis in France, and British restraint as a result of this...."

In spite of the contents of these two directives, Hitler made a speech in the Reichstag on 28 April 1939 in which, after describing the Polish Government's alleged rejection of an offer he had made with regard to Danzig and the Polish Corridor, he stated:

"I have regretted greatly this incomprehensible attitude of the Polish Government, but that alone is not the decisive fact; the worst is that now Poland, like Czechoslovakia a year ago, believes, under the pressure of a lying international campaign, that it must call up its troops, although Germany on her part has not called up a single man, and had not thought of proceeding in any way against Poland.... The intention to attack on the part of Germany which was merely invented by the international press...."

It was 4 weeks after making this speech that Hitler, on 23 May 1939, held the important military conference to which reference has already been made. Among the persons present were the Defendants Göring, Raeder, and Keitel. The adjutant on duty that day was Lt. Col. Schmundt, and he made a record of what happened, certifying it with his signature as a correct record.

The purpose of the meeting was to enable Hitler to inform the heads of the Armed Forces and their staffs of his views on the political situation and his future aims. After analyzing the political situation and reviewing the course of events since 1933, Hitler announced his decision to attack Poland. He admitted that the quarrel with Poland over Danzig was not the reason for this attack, but the necessity for Germany to enlarge her living space and secure her food supplies. He said:

> "The solution of the problem demands courage. The principle by which one evades solving the problem by adapting oneself to circumstances is inadmissible. Circumstances must rather be adapted to aims. This is impossible without invasion of foreign states or attacks upon foreign property."

Later in his address he added:

> "There is therefore no question of sparing Poland, and we are left with the decision to attack Poland at the first suitable opportunity. We cannot expect a repetition of the Czech affair. There will be war. Our task is to isolate Poland. The success of the isolation will be decisive.... The isolation of Poland is a matter of skillful politics."

Lt. Col. Schmundt's record of the meeting reveals that Hitler fully realized the possibility of Great Britain and France coming to Poland's assistance. If, therefore, the isolation of Poland could not be achieved, Hitler was of the opinion that Germany should attack Great Britain and France first, or at any rate should concentrate primarily on the war in the West, in order to defeat Great Britain and France quickly, or at least to destroy their effectiveness. Nevertheless, Hitler stressed that war with England and France would be a life-and-death struggle which might last a long time, and that preparations must be made accordingly.

During the weeks which followed this conference, other meetings were held and directives were issued in preparation for the war. The Defendant Ribbentrop was sent to Moscow to negotiate a non-aggression pact with the Soviet Union.

On 22 August 1939 there took place the important meeting of that day, to which reference has already been made. The Prosecution have put in evidence two unsigned captured documents which appear to be records made of this meeting by persons who were present. The first document is headed: "The Führer's speech to the commanders-in-chief on 22 August 1939...." The purpose of the speech was to announce the decision to make war on Poland at once, and Hitler began by saying:

> "It was clear to me that a conflict with Poland had to come sooner or later. I had already made this decision in the spring, but I thought that I would first turn against the West

in a few years, and only afterwards against the East.... I wanted to establish an acceptable relationship with Poland in order to fight first against the West. But this plan, which was agreeable to me, could not be executed since essential points have changed. It became clear to me that Poland would attack us in case of a conflict with the West."

Hitler then went on to explain why he had decided that the most favorable moment had arrived for starting the war.

"Now," said Hitler, "Poland is in the position in which I wanted her.... I am only afraid that at the last moment some *Schweinehund* will make a proposal for mediation. A beginning has been made for the destruction of England's hegemony."

This document closely resembles one of the documents put in evidence in behalf of the Defendant Raeder. This latter document consists of a summary of the same speech, compiled on the day it was made, by one Admiral Böhm, from notes he had taken during the meeting. In substance it says that the moment had arrived to settle the dispute with Poland by military invasion, that although a conflict between Germany and the West was unavoidable in the long run, the likelihood of Great Britain and France coming to Poland's assistance was not great, and that even if a war in the West should come about, the first aim should be the crushing of the Polish military strength. It also contains a statement by Hitler that an appropriate propaganda reason for invading Poland would be given, the truth or falsehood of which was unimportant, since "the right lies in victory."

The second unsigned document put in evidence by the Prosecution is headed: "Second speech by the Führer on 22 August 1939," and it is in the form of notes of the main points made by Hitler. Some of these are as follows:

"Everybody shall have to make a point of it that we were determined from the beginning to fight the Western Powers. Struggle for life or death... destruction of Poland in the foreground. The aim is elimination of living forces, not the arrival at a certain line. Even if war should break out in the West, the destruction of Poland shall be the primary objective. I shall give a propagandist cause for starting the war—never mind whether it be plausible or not. The victor shall not be asked later on whether we told the truth or not. In starting and making a war, not the right is what matters, but victory.... The start will be ordered probably by Saturday morning" (That is to say, 26 August).

In spite of its being described as a second speech, there are sufficient points of similarity with the two previously mentioned

documents to make it appear very probable that this is an account of the same speech, not as detailed as the other two, but in substance the same.

These three documents establish that the final decision as to the date of Poland's destruction, which had been agreed upon and planned earlier in the year, was reached by Hitler shortly before 22 August 1939. They also show that although he hoped to be able to avoid having to fight Great Britain and France as well, he fully realized there was a risk of this happening, but it was a risk which he was determined to take.

The events of the last days of August confirm this determination. On 22 August 1939, the same day as the speech just referred to, the British Prime Minister wrote a letter to Hitler, in which he said:

> "Having thus made our position perfectly clear, I wish to repeat to you my conviction that war between our two peoples would be the greatest calamity that could occur."

On 23 August Hitler replied:

> "The question of the treatment of European problems on a peaceful basis is not a decision which rests with Germany, but primarily on those who since the crime committed by the Versailles *Diktat* have stubbornly and consistently opposed any peaceful revision. Only after a change of spirit on the part of the responsible powers can there be any real change in the relationship between England and Germany."

There followed a number of appeals to Hitler to refrain from forcing the Polish issue to the point of war. These were from President Roosevelt on 24 and 25 August; from His Holiness the Pope on 24 and 31 August; and from M. Daladier, the Prime Minister of France, on 26 August. All these appeals fell on deaf ears.

On 25 August, Great Britain signed a pact of mutual assistance with Poland, which reinforced the understanding she had given to Poland earlier in the year. This, coupled with the news of Mussolini's unwillingness to enter the war on Germany's side, made Hitler hesitate for a moment. The invasion of Poland, which was timed to start on 26 August, was postponed until a further attempt had been made to persuade Great Britain not to intervene. Hitler offered to enter into a comprehensive agreement with Great Britain, once the Polish question had been settled. In reply to this, Great Britain made a counter-suggestion for the settlement of the Polish dispute by negotiation. On 29 August Hitler informed the British Ambassador that the German Government, though skeptical as to the result, would be prepared to enter into direct negotiations with a Polish emissary, provided he arrived in Berlin with plenipotentiary powers by midnight for the following day, 30 August. The Polish Government were informed of this, but with the example of

Schuschnigg and Hacha before them, they decided not to send such an emissary. At midnight on 30 August the Defendant Ribbentrop read to the British Ambassador at top speed a document containing the first precise formulation of the German demands against Poland. He refused, however, to give the Ambassador a copy of this, and stated that in any case it was too late now, since no Polish plenipotentiary had arrived.

In the opinion of the Tribunal, the manner in which these negotiations were conducted by Hitler and Ribbentrop showed that they were not entered into in good faith or with any desire to maintain peace, but solely in the attempt to prevent Great Britain and France from honoring their obligations to Poland.

Parallel with these negotiations were the unsuccessful attempts made by Göring to effect the isolation of Poland by persuading Great Britain not to stand by her pledged word, through the services of one Birger Dahlerus, a Swede. Dahlerus, who was called as a witness by Göring, had a considerable knowledge of England and of things English, and in July 1939 was anxious to bring about a better understanding between England and Germany, in the hope of preventing a war between the two countries. He got into contact with Göring as well as with official circles in London, and during the latter part of August, Göring used him as an unofficial intermediary to try and deter the British Government from their opposition to Germany's intentions towards Poland. Dahlerus, of course, had no knowledge at the time of the decision which Hitler had secretly announced on 22 August, nor of the German military directives for the attack on Poland which were already in existence. As he admitted in his evidence, it was not until 26 September, after the conquest of Poland was virtually complete, that he first realized that Göring's aim all along had been to get Great Britain's consent to Germany's seizure of Poland.

After all attempts to persuade Germany to agree to a settlement of her dispute with Poland on a reasonable basis had failed, Hitler, on 31 August, issued his final directive, in which he announced that the attack on Poland would start in the early morning of 1 September, and gave instructions as to what action would be taken if Great Britain and France should enter the war in defense of Poland.

In the opinion of the Tribunal, the events of the days immediately preceding 1 September 1939 demonstrate the determination of Hitler and his associates to carry out the declared intention of invading Poland at all costs, despite appeals from every quarter. With the ever-increasing evidence before him that this intention would lead to war with Great Britain and France as well, Hitler was resolved not to depart from the course he had set for himself. The Tribunal is fully satisfied by the evidence that the war initiated

by Germany against Poland on 1 September 1939 was most plainly an aggressive war, which was to develop in due course into a war which embraced almost the whole world, and resulted in the commission of countless crimes, both against the laws and customs of war, and against humanity.

THE PRESIDENT: Now I shall ask M. Falco to continue the reading of the Judgment.

M. LE CONSEILLER R. FALCO (Alternate member of the Tribunal for the French Republic):

The Invasion of Denmark and Norway

The aggressive war against Poland was but the beginning. The aggression of Nazi Germany quickly spread from country to country. In point of time the first two countries to suffer were Denmark and Norway.

On 31 May 1939 a treaty of non-aggression was made between Germany and Denmark, and signed by the Defendant Ribbentrop. It was there solemnly stated that the parties to the treaty were "firmly resolved to maintain peace between Denmark and Germany under all circumstances." Nevertheless, Germany invaded Denmark on 9 April 1940.

On 2 September 1939, after the outbreak of war with Poland, Germany sent a solemn assurance to Norway in these terms:

> "The German Reich Government is determined, in view of the friendly relations which exist between Norway and Germany, under no circumstance to prejudice the inviolability and integrity of Norway, and to respect the territory of the Norwegian State. In making this declaration the Reich Government naturally expects, on its side, that Norway will observe an unimpeachable neutrality towards the Reich and will not tolerate any breaches of Norwegian neutrality by any third party which might occur. Should the attitude of the Royal Norwegian Government differ from this so that any such breach of neutrality by a third party occurs, the Reich Government would then obviously be compelled to safeguard the interests of the Reich in such a way as the resulting situation might dictate."

On 9 April 1940, in pursuance of her plan of campaign, Norway was invaded by Germany.

The idea of attacking Norway originated, it appears, with the Defendants Raeder and Rosenberg. On 3 October 1939 Raeder prepared a memorandum on the subject of "gaining bases in Norway," and amongst the questions discussed was the question: "Can bases be gained by military force against Norway's will, if it is

impossible to carry this out without fighting?" Despite this fact, 3 days later, further assurances were given to Norway by Germany, which stated: "Germany has never had any conflicts of interest or even points of controversy with the Northern States, and neither has she any today."

Three days later again, the Defendant Dönitz prepared a memorandum on the same subject, namely, bases in Norway, and suggested the establishment of a base in Trondheim with an alternative of supplying fuel in Narvik. At the same time the Defendant Raeder was in correspondence with Admiral Carls, who pointed out to him the importance of an occupation of the Norwegian coast by Germany. On 10 October Raeder reported to Hitler the disadvantages to Germany which an occupation by the British would have. In the months of October and November Raeder continued to work on the possible occupation of Norway, in conjunction with the "Rosenberg Organization." The "Rosenberg Organization" was the Foreign Affairs Bureau of the NSDAP, and Rosenberg as Reichsleiter was in charge of it. Early in December, Quisling, the notorious Norwegian traitor, visited Berlin and was seen by the Defendants Rosenberg and Raeder. He put forward a plan for a *coup d'état* in Norway. On 12 December, the Defendant Raeder and the Naval Staff, together with the Defendants Keitel and Jodl, had a conference with Hitler, when Raeder reported on his interview with Quisling, and set out Quisling's views. On 16 December Hitler himself interviewed Quisling on all these matters. In the report of the activities of the Foreign Affairs Bureau of the NSDAP for the years 1933-1943, under the heading of "Political preparations for the military occupation of Norway," it is stated that at the interview with Quisling Hitler said that he would prefer a neutral attitude on the part of Norway as well as the whole of Scandinavia, as he did not desire to extend the theater of war, or to draw other nations into the conflict. If the enemy attempted to extend the war he would be compelled to guard himself against that undertaking; he promised Quisling financial support, and assigned to a special military staff the examination of the military questions involved.

On 27 January 1940 a memorandum was prepared by the Defendant Keitel regarding the plans for the invasion of Norway. On 28 February 1940 the Defendant Jodl entered in his diary:

> "I proposed first to the Chief of OKW and then to the Führer that 'Case Yellow' (that is the operation against the Netherlands) and 'Weser Exercise' (that is the operation against Norway and Denmark) must be prepared in such a way that they will be independent of one another as regards both time and forces employed."

On 1 March Hitler issued a directive *re* the Weser Exercise which contained the words:

> "The development of the situation in Scandinavia requires the making of all preparations for the occupation of Denmark and Norway by a part of the German Armed Forces. This operation should prevent British encroachment on Scandinavia and the Baltic; further, it should guarantee our ore base in Sweden and give our Navy and Air Force a wider start line against Britain.... The crossing of the Danish border and the landings in Norway must take place simultaneously.... It is most important that the Scandinavian States as well as the Western opponents should be taken by surprise by our measures."

On 24 March the naval operation orders for the Weser Exercise were issued, and on 30 March the Defendant Dönitz as Commander-in-Chief of U-boats issued his operational order for the occupation of Denmark and Norway. On 9 April 1940 the German forces invaded Norway and Denmark.

From this narrative it is clear that as early as October 1939 the question of invading Norway was under consideration. The defense that has been made here is that Germany was compelled to attack Norway to forestall an Allied invasion, and her action was therefore preventive.

It must be remembered that preventive action in foreign territory is justified only in case of "an instant and overwhelming necessity for self-defense, leaving no choice of means, and no moment of deliberation" (The Caroline Case, Moore's *Digest of International Law* II, 412). How widely the view was held in influential German circles that the Allies intended to occupy Norway cannot be determined with exactitude. Quisling asserted that the Allies would intervene in Norway with the tacit consent of the Norwegian Government. The German Legation at Oslo disagreed with this view, although the Naval Attaché at that Legation shared it.

The War Diary of the German Naval Operations Staff for 13 January 1940 stated that the Chief of the Naval Operations Staff thought that the most favorable solution would be the maintenance of the neutrality of Norway, but he harbored the firm conviction that England intended to occupy Norway in the near future, relying on the tacit agreement of the Norwegian Government.

The directive of Hitler issued on 1 March 1940 for the attack on Denmark and Norway stated that the operation "should prevent British encroachment on Scandinavia and the Baltic."

It is, however, to be remembered that the Defendant Raeder's memorandum of 3 October 1939 makes no reference to forestalling

the Allies, but is based upon the aim of "improving our strategical and operational position."

The memorandum itself is headed "Gaining of bases in Norway." The same observation applies *mutatis mutandis* to the memorandum of the Defendant Dönitz of 9 October 1939.

Furthermore, on 13 March the Defendant Jodl recorded in his diary: "Führer does not give order yet for 'W' (Weser Exercise). He is still looking for an excuse."

On 14 March 1940 he again wrote: "Führer has not yet decided what reasons to give for 'Weser Exercise'."

On 21 March 1940 he recorded the misgivings of Task Force XXI about the long interval between taking up readiness positions and the close of the diplomatic negotiations, and added:

> "Führer rejects any earlier negotiations, as otherwise calls for help go out to England and America. If resistance is put up it must be ruthlessly broken."

On 2 April he records that all the preparations are completed; on 4 April the naval operational order was issued; and on 9 April, the invasion was begun.

From all this it is clear that when the plans for an attack on Norway were being made, they were not made for the purpose of forestalling an imminent Allied landing, but, at the most, that they might prevent an Allied occupation at some future date.

When the final orders for the German invasion of Norway were given, the diary of the Naval Operations Staff for 23 March 1940 records: "A mass encroachment by the English into Norwegian territorial waters... is not to be expected at the present time." And Admiral Assmann's entry for 26 March says: "British landing in Norway not considered serious."

Documents which were subsequently captured by the Germans are relied on to show that the Allied plan to occupy harbors and airports in Western Norway was a definite plan, although in all points considerably behind the German plans under which the invasion was actually carried out. These documents indicate that an altered plan had been finally agreed upon on 20 March 1940, that a convoy should leave England on 5 April, and that mining in Norwegian waters would begin the same day; and that on 5 April the sailing time had been postponed until 8 April. But these plans were not the cause of the German invasion of Norway. Norway was occupied by Germany to afford her bases from which a more effective attack on England and France might be made, pursuant to plans prepared long in advance of the Allied plans which are now relied on to support the argument of self-defense.

It was further argued that Germany alone could decide, in accordance with the reservations made by many of the signatory powers at the time of the conclusion of the Briand-Kellogg Pact, whether preventive action was a necessity, and that in making her decision her judgment was conclusive. But whether action taken under the claim of self-defense was in fact aggressive or defensive must ultimately be subject to investigation and adjudication if international law is ever to be enforced.

No suggestion is made by the defendants that there was any plan by any belligerent other than Germany to occupy Denmark. No excuse for that aggression has ever been offered.

As the German armies entered Norway and Denmark, German memoranda were handed to the Norwegian and Danish Governments which gave the assurance that the German troops did not come as enemies, that they did not intend to make use of the points occupied by German troops as bases for operations against England as long as they were not forced to do so by measures taken by England and France, and that they had come to protect the North against the proposed occupation of Norwegian strong-points by English-French forces.

The memoranda added that Germany had no intention of infringing the territorial integrity and political independence of the Kingdom of Norway then or in the future. Nevertheless, on 3 June 1940, a German naval memorandum discussed the use to be made of Norway and Denmark, and put forward one solution for consideration, that the territories of Denmark and Norway acquired during the course of the war should continue to be occupied and organized so that they could in the future be considered as German possessions.

In the light of all the available evidence it is impossible to accept the contention that the invasions of Denmark and Norway were defensive, and in the opinion of the Tribunal they were acts of aggressive war.

The Invasion of Belgium, the Netherlands and Luxembourg

The plan to seize Belgium and the Netherlands was considered in August 1938, when the attack on Czechoslovakia was being formulated, and the possibility of war with France and England was contemplated. The advantage to Germany of being able to use these countries for her own purposes, particularly as air bases in the war against England and France, was emphasized. In May of 1939, when Hitler made his irrevocable decision to attack Poland, and foresaw the possibility at least of a war with England and France in consequence, he told his military commanders: "Dutch

and Belgian air bases must be occupied.... Declarations of neutrality must be ignored."

On 22 August in the same year, he told his military commanders that England and France, in his opinion, would not "violate the neutrality of these countries." At the same time he assured Belgium and Holland and Luxembourg that he would respect their neutrality; and on 6 October 1939, after the Polish campaign, he repeated this assurance. On 7 October General Von Brauchitsch directed Army Group B to prepare "for the immediate invasion of Dutch and Belgian territory, if the political situation so demands." In a series of orders, which were signed by the Defendants Keitel and Jodl, the attack was fixed for 10 November 1939, but it was postponed from time to time until May of 1940 on account of weather conditions and transport problems.

At the conference on 23 November 1939 Hitler said:

"We have an Achilles heel: the Ruhr. The progress of the war depends on the possession of the Ruhr. If England and France push through Belgium and Holland into the Ruhr, we shall be in the greatest danger.... Certainly England and France will assume the offensive against Germany when they are armed. England and France have means of pressure to bring Belgium and Holland to request English and French help. In Belgium and Holland the sympathies are all for France and England.... If the French Army marches into Belgium in order to attack us, it will be too late for us. We must anticipate them.... We shall sow the English coast with mines which cannot be cleared. This mine warfare with the Luftwaffe demands a different starting point. England cannot live without its imports. We can feed ourselves. The permanent sowing of mines on the English coast will bring England to her knees. However, this can only occur if we have occupied Belgium and Holland.... My decision is unchangeable; I shall attack France and England at the most favorable and quickest moment. Breach of the neutrality of Belgium and Holland is meaningless. No one will question that when we have won. We shall not bring about the breach of neutrality as idiotically as it was in 1914. If we do not break the neutrality, then England and France will. Without attack[3]) the war is not to be ended victoriously."

On 10 May 1940 the German forces invaded the Netherlands, Belgium, and Luxembourg. On the same day the German Ambassadors handed to the Netherlands and Belgian Governments a memorandum alleging that the British and French armies, with the consent of Belgium and Holland, were planning to march through those countries to attack the Ruhr, and justifying the invasion on

these grounds. Germany, however, assured the Netherlands and Belgium that their integrity and their possessions would be respected. A similar memorandum was delivered to Luxembourg on the same date.

There is no evidence before the Tribunal to justify the contention that the Netherlands, Belgium, and Luxembourg were invaded by Germany because their occupation had been planned by England and France. British and French staffs had been co-operating in making certain plans for military operations in the Low Countries, but the purpose of this planning was to defend these countries in the event of a German attack.

The invasion of Belgium, Holland, and Luxembourg was entirely without justification.

It was carried out in pursuance of policies long considered and prepared, and was plainly an act of aggressive war. The resolve to invade was made without any other consideration than the advancement of the aggressive policies of Germany.

The Aggression against Yugoslavia and Greece

On 12 August 1939 Hitler had a conversation with Ciano and the Defendant Ribbentrop at Obersalzberg. He then said:

> "Generally speaking, the best thing to happen would be for the neutrals to be liquidated one after the other. This process could be carried out more easily if on every occasion one partner of the Axis covered the other while it was dealing with the uncertain neutral. Italy might well regard Yugoslavia as a neutral of this kind."

This observation was made only 2 months after Hitler had given assurances to Yugoslavia that he would regard her frontier as final and inviolable. On the occasion of the visit to Germany of the Prince Regent of Yugoslavia on 1 June 1939, Hitler had said in a public speech:

> "The firmly established reliable relationship of Germany to Yugoslavia, now that owing to historical events we have become neighbors with common boundaries fixed for all time, will not only guarantee lasting peace between our two peoples and countries, but can also represent an element of calm to our nerve-racked continent. This peace is the goal of all who are disposed to perform really constructive work."

On 6 October 1939 Germany repeated those assurances to Yugoslavia, after Hitler and Ribbentrop had unsuccessfully tried to persuade Italy to enter the war on the side of Germany by attacking Yugoslavia. On 28 October, 1940 Italy invaded Greece, but the military operations met with no success. In November Hitler wrote

to Mussolini with regard to the invasion of Greece, and the extension of the war in the Balkans, and pointed out that no military operations could take place in the Balkans before the following March, and therefore Yugoslavia must, if at all possible, be won over by other means and in other ways. But on 12 November 1940 Hitler issued a directive for the prosecution of the war, and it included the words:

"The Balkans: The Commander-in-Chief of the Army will make preparations for occupying the Greek mainland north of the Aegean Sea, in case of need entering through Bulgaria."

On 13 December he issued a directive concerning the operation "Marita," the code name for the invasion of Greece, in which he stated:

"1. The result of the battles in Albania is not yet decisive. Because of a dangerous situation in Albania, it is doubly necessary that the British endeavor be foiled to create air bases under the protection of a Balkan front, which would be dangerous above all to Italy as to the Romanian oilfields.

"2. My plan therefore is (a) to form a slowly increasing task force in Southern Romania within the next months (b) after the setting-in of favorable weather, probably in March, to send a task force for the occupation of the Aegean north coast by way of Bulgaria, and if necessary to occupy the entire Greek mainland."

On 20 January 1941, at a meeting between Hitler and Mussolini, at which Defendants Ribbentrop, Keitel, Jodl, and others were present, Hitler stated:

"The massing of troops in Romania serves a threefold purpose:

(a) an operation against Greece;

(b) protection of Bulgaria against Russia and Turkey;

(c) safeguarding the guarantee to Romania....

It is desirable that this deployment be completed without interference from the enemy. Therefore, disclose the game as late as possible. The tendency will be to cross the Danube at the last possible moment, and to line up for attack at the earliest possible moment."

On 19 February 1941 an OKW directive for the operation "Marita" stated:

"On 18 February the Führer made the following decision regarding the carrying-out of Operation Marita: The following dates are envisaged: Commencement of building bridge, 28 February; crossing of the Danube, 2 March."

On 3 March 1941, British troops landed in Greece to assist the Greeks to resist the Italians; and on 18 March, at a meeting between

Hitler and the Defendant Raeder, at which the Defendants Keitel and Jodl were also present, the Defendant Raeder asked for confirmation that "all of Greece will have to be occupied, even in the event of a peaceful settlement," to which Hitler replied, "The complete occupation is a prerequisite of any settlement."

On 25 March, on the occasion of the adherence of Yugoslavia to the Tripartite Pact at a meeting in Vienna, the Defendant Ribbentrop, on behalf of the German Government, confirmed the determination of Germany to respect the sovereignty and territorial integrity of Yugoslavia at all times. On 26 March the Yugoslav ministers, who had adhered to the Tripartite Pact, were removed from office by a *coup d'état* in Belgrade on their return from Vienna, and the new Government repudiated the pact. Thereupon on 27 March, at a conference in Berlin with the High Command at which the Defendants Göring, Keitel and Jodl were present, and the Defendant Ribbentrop part of the time, Hitler stated that Yugoslavia was an uncertain factor in regard to the contemplated attack on Greece, and even more so with regard to the attack upon Russia which was to be conducted later on. Hitler announced that he was determined, without waiting for possible loyalty declarations of the new Government, to make all preparations in order to destroy Yugoslavia militarily and as a national unit. He stated that he would act with "unmerciful harshness."

On 6 April German forces invaded Greece and Yugoslavia without warning, and Belgrade was bombed by the Luftwaffe. So swift was this particular invasion that there had not been time to establish any "incidents" as a usual preliminary, or to find and publish any adequate "political" explanations. As the attack was starting on 6 April, Hitler proclaimed to the German people that this attack was necessary because the British forces in Greece (who were helping the Greeks to defend themselves against the Italians) represented a British attempt to extend the war to the Balkans.

It is clear from this narrative that aggressive war against Greece and Yugoslavia had long been in contemplation, certainly as early as August of 1939. The fact that Great Britain had come to the assistance of the Greeks, and might thereafter be in a position to inflict great damage upon German interests, was made the occasion for the occupation of both countries.

The Aggressive War against the Union of Soviet Socialist Republics

On 23 August 1939 Germany signed the non-aggression pact with the Union of Soviet Socialist Republics.

The evidence has shown unmistakably that the Soviet Union on their part conformed to the terms of this pact; indeed the German

Government itself had been assured of this by the highest German sources. Thus, the German Ambassador in Moscow informed his Government that the Soviet Union would go to war only if attacked by Germany, and this statement is recorded in the German War Diary under the date of 6 June 1941.

Nevertheless, as early as the late summer of 1940, Germany began to make preparations for an attack on the U.S.S.R. in spite of the non-aggression pact. This operation was secretly planned under the code name "Case Barbarossa," and the former Field Marshal Paulus testified that on 3 September 1940, when he joined the German General Staff, he continued developing "Case Barbarossa," which was finally completed at the beginning of November 1940; and that even then, the German General Staff had no information that the Soviet Union was preparing for war.

On 18 December 1940 Hitler issued Directive Number 21, initialled by Keitel and Jodl, which called for the completion of all preparations connected with the realization of "Case Barbarossa" by 15 May 1941. This directive stated:

> "The German Armed Forces must be prepared to crush Soviet Russia in a quick campaign before the end of the war against England.... Great caution has to be exercised that the intention of an attack will not be recognized."

Before the directive of 18 December had been made, the Defendant Göring had informed General Thomas, Chief of the Office of War Economy of the OKW, of the plan, and General Thomas made surveys of the economic possibilities of the U.S.S.R. including its raw materials, its power and transport system, and its capacity to produce arms.

In accordance with these surveys, an economic staff for the Eastern territories with many military-economic units (inspectorates, commandos, groups) was created under the supervision of the Defendant Göring. In conjunction with the military command, these units were to achieve the most complete and efficient economic exploitation of the occupied territories in the interest of Germany.

The framework of the future political and economic organization of the occupied territories was designed by the Defendant Rosenberg over a period of 3 months, after conferences with and assistance by the Defendants Keitel, Jodl, Raeder, Funk, Göring, Ribbentrop, and Frick or their representatives. It was made the subject of a most detailed report immediately after the invasion.

These plans outlined the destruction of the Soviet Union as an independent State, and its partition, the creation of so-called Reich Commissariats, and the conversion of Estonia, Latvia, Bielorussia and other territories into German colonies.

At the same time Germany drew Hungary, Romania, and Finland into the war against the U.S.S.R. In December 1940 Hungary agreed to participate on the promise of Germany that she should have certain territories at the expense of Yugoslavia.

In May 1941 a final agreement was concluded with Antonescu, the Prime Minister of Romania, regarding the attack on the U.S.S.R., in which Germany promised to Romania Bessarabia, Northern Bukovina, and the right to occupy Soviet territory up to the Dnieper.

On 22 June 1941, without any declaration of war, Germany invaded Soviet territory in accordance with the plans so long made.

The evidence which has been given before this Tribunal proves that Germany had the design carefully thought out, to crush the U.S.S.R. as a political and military power, so that Germany might expand to the east according to her own desire. In *Mein Kampf* Hitler has written:

> "If new territory were to be acquired in Europe, it must have been mainly at Russia's cost, and once again the new German Empire should have set out on its march along the same road as was formerly trodden by the Teutonic knights, this time to acquire soil for the German plough by means of the German sword and thus provide the nation with its daily bread."

But there was a more immediate purpose, and in one of the memoranda of the OKW that immediate purpose was stated to be to feed the German armies from Soviet territory in the third year of the war, even if "as a result many millions of people will be starved to death if we take out of the country the things necessary for us."

The final aims of the attack on the Soviet Union were formulated at a conference with Hitler on 16 July 1941, in which the Defendants Göring, Keitel, Rosenberg, and Bormann participated:

> "There can be no talk of the creation of a military power west of the Urals, even if we should have to fight 100 years to achieve this.... All the Baltic regions must become part of the Reich. The Crimea and adjoining regions (north of the Crimea) must likewise be incorporated into the Reich.... The region of the Volga as well as the Baku district must likewise be incorporated into the Reich.... The Finns want Eastern Karelia. However, in view of the large deposits of nickel, the Kola peninsula must be ceded to Germany."

It was contended for the defendants that the attack upon the U.S.S.R. was justified because the Soviet Union was contemplating an attack upon Germany, and making preparations to that end. It is impossible to believe that this view was ever honestly entertained.

The plans for the economic exploitation of the U.S.S.R., for the removal of masses of the population, for the murder of commissars

and political leaders, were all part of the carefully prepared scheme launched on 22 June without warning of any kind, and without the shadow of legal excuse. It was plain aggression.

War against the United States

Four days after the attack launched by the Japanese on the United States fleet in Pearl Harbor on 7 December 1941, Germany declared war on the United States.

The Tripartite Pact between Germany, Italy, and Japan had been signed on 27 September 1940, and from that date until the attack upon the U.S.S.R. the Defendant Von Ribbentrop, with other defendants, was endeavoring to induce Japan to attack British possessions in the Far East. This, it was thought, would hasten England's defeat, and also keep the United States out of the war.

The possibility of a direct attack on the United States was considered and discussed as a matter for the future. Major Von Falkenstein, the Luftwaffe liaison officer with the Operations Staff of the OKW, summarizing military problems which needed discussion in Berlin in October of 1940, spoke of the possibility "of the prosecution of the war against America at a later date." It is clear, too, that the German policy of keeping America out of the war, if possible, did not prevent Germany promising support to Japan even against the United States. On 4 April 1941, Hitler told Matsuoka, the Japanese Foreign Minister, in the presence of the Defendant Ribbentrop, that Germany would "strike without delay" if a Japanese attack on Singapore should lead to war between Japan and the United States. The next day Ribbentrop himself urged Matsuoka to bring Japan into the war.

On 28 November 1941, 10 days before the attack on Pearl Harbor, Ribbentrop encouraged Japan, through her Ambassador in Berlin, to attack Great Britain and the United States, and stated that should Japan become engaged in a war with the United States, Germany would join the war immediately. A few days later, Japanese representatives told Germany and Italy that Japan was preparing to attack the United States, and asked for their support. Germany and Italy agreed to do this, although in the Tripartite Pact, Italy and Germany had undertaken to assist Japan only if she were attacked. When the assault on Pearl Harbor did take place, the Defendant Ribbentrop is reported to have been "overjoyed," and later, at a ceremony in Berlin, when a German medal was awarded to Oshima, the Japanese Ambassador, Hitler indicated his approval of the tactics which the Japanese had adopted of negotiating with the United States as long as possible, and then striking hard without any declaration of war.

Although it is true that Hitler and his colleagues originally did not consider that a war with the United States would be beneficial to their interest, it is apparent that in the course of 1941 that view was revised, and Japan was given every encouragement to adopt a policy which would almost certainly bring the United States into the war. And when Japan attacked the United States fleet in Pearl Harbor and thus made aggressive war against the United States, the Nazi Government caused Germany to enter that war at once on the side of Japan by declaring war themselves on the United States.

THE PRESIDENT: The Tribunal will adjourn until a quarter past two.

[A recess was taken until 1415 hours.]

Afternoon Session

THE PRESIDENT: I now ask Mr. Biddle to continue the reading of the Judgment.

MR. FRANCIS BIDDLE (Member of the Tribunal for the United States):

Violations of International Treaties

The Charter defines as a crime the planning or waging of war, that is, a war of aggression or a war in violation of international treaties. The Tribunal has decided that certain of the defendants planned and waged aggressive wars against twelve nations, and were therefore guilty of this series of crimes. This makes it unnecessary to discuss the subject in further detail, or even to consider at any length the extent to which these aggressive wars were also "wars in violation of international treaties, agreements, or assurances."

These treaties are set out in Appendix C of the Indictment. Those of principal importance are the following.

Hague Conventions

In the 1899 Convention the signatory powers agreed: "before an appeal to arms . . . to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly powers." A similar clause was inserted in the Convention for Pacific Settlement of International Disputes of 1907. In the accompanying Convention Relative to Opening of Hostilities, Article 1 contains this far more specific language:

> "The Contracting Powers recognize that hostilities between them must not commence without a previous and explicit warning, in the form of either a declaration of war, giving reasons, or an ultimatum with a conditional declaration of war."

Germany was a party to these conventions.

Versailles Treaty

Breaches of certain provisions of the Versailles Treaty are also relied on by the Prosecution—not to fortify the left bank of the Rhine (Articles 42-44); to "respect strictly the independence of Austria" (Article 80); renunciation of any rights in Memel (Article 99), and in the Free City of Danzig (Article 100); the recognition of the independence of the Czechoslovak State; and the military, naval, and air clauses against German rearmament found in Part V. There is no doubt that action was taken by the German Government

contrary to all these provisions, the details of which are set out in Appendix C. With regard to the Treaty of Versailles, the matters relied on are:

1. The violation of Articles 42 to 44 in respect of the demilitarized zone of the Rhineland;

2. The annexation of Austria on 13 March 1938, in violation of Article 80;

3. The incorporation of the district of Memel on 22 March 1939, in violation of Article 99;

4. The incorporation of the Free City of Danzig on 1 September 1939, in violation of Article 100;

5. The incorporation of the provinces of Bohemia and Moravia on 16 March 1939, in violation of Article 81;

6. The repudiation of the military, naval, and air clauses of the Treaty, in or about March of 1935.

On 21 May 1935 Germany announced that, whilst renouncing the disarmament clauses of the Treaty, she would still respect the territorial limitations, and would comply with the Locarno Pact. (With regard to the first five breaches alleged, therefore, the Tribunal finds the allegation proved.)

Treaties of Mutual Guarantee, Arbitration, and Non-Aggression

It is unnecessary to discuss in any detail the various treaties entered into by Germany with other powers. Treaties of mutual guarantee were signed by Germany at Locarno in 1925, with Belgium, France, Great Britain, and Italy, assuring the maintenance of the territorial *status quo*. Arbitration treaties were also executed by Germany at Locarno with Czechoslovakia, Belgium, and Poland.

Article I of the latter treaty is typical, providing:

> "All disputes of every kind between Germany and Poland . . . which it may not be possible to settle amicably by the normal methods of diplomacy, shall be submitted for decision to an arbitral tribunal. . . ."

Conventions of arbitration and conciliation were entered into between Germany, the Netherlands, and Denmark in 1926; and between Germany and Luxembourg in 1929. Non-aggression treaties were executed by Germany with Denmark and Russia in 1939.

Kellogg-Briand Pact

The Pact of Paris was signed on 27 August 1928 by Germany, the United States, Belgium, France, Great Britain, Italy, Japan, Poland, and other countries; and subsequently by other powers. The Tribunal has made full reference to the nature of this pact and its

legal effect in another part of this Judgment. It is therefore not necessary to discuss the matter further here, save to state that in the opinion of the Tribunal this pact was violated by Germany in all the cases of aggressive war charged in the Indictment. It is to be noted that on 26 January 1934 Germany signed a Declaration for the Maintenance of Permanent Peace with Poland, which was explicitly based on the Pact of Paris, and in which the use of force was outlawed for a period of 10 years.

The Tribunal does not find it necessary to consider any of the other treaties referred to in the Appendix, or the repeated agreements and assurances of her peaceful intentions entered into by Germany.

The Law of the Charter

The jurisdiction of the Tribunal is defined in the Agreement and Charter, and the crimes coming within the jurisdiction of the Tribunal, for which there shall be individual responsibility, are set out in Article 6. The law of the Charter is decisive, and binding upon the Tribunal.

The making of the Charter was the exercise of the sovereign legislative power by the countries to which the German Reich unconditionally surrendered; and the undoubted right of these countries to legislate for the occupied territories has been recognized by the civilized world. The Charter is not an arbitrary exercise of power on the part of the victorious nations, but in the view of the Tribunal, as will be shown, it is the expression of international law existing at the time of its creation; and to that extent is itself a contribution to international law.

The Signatory Powers created this Tribunal, defined the law it was to administer, and made regulations for the proper conduct of the Trial. In doing so, they have done together what any one of them might have done singly; for it is not to be doubted that any nation has the right thus to set up special courts to administer law. With regard to the constitution of the Court, all that the defendants are entitled to ask is to receive a fair trial on the facts and law.

The Charter makes the planning or waging of a war of aggression or a war in violation of international treaties a crime; and it is therefore not strictly necessary to consider whether and to what extent aggressive war was a crime before the execution of the London Agreement. But in view of the great importance of the questions of law involved, the Tribunal has heard full argument from the Prosecution and the Defense, and will express its view on the matter.

It was urged on behalf of the defendants that a fundamental principle of all law—international and domestic—is that there can

be no punishment of crime without a pre-existing law. "*Nullum crimen sine lege, nulla poena sine lege.*" It was submitted that *ex post facto* punishment is abhorrent to the law of all civilized nations, that no sovereign power had made aggressive war a crime at the time that the alleged criminal acts were committed, that no statute had defined aggressive war, that no penalty had been fixed for its commission, and no court had been created to try and punish offenders.

In the first place, it is to be observed that the maxim *nullum crimen sine lege* is not a limitation of sovereignty, but is in general a principle of justice. To assert that it is unjust to punish those who in defiance of treaties and assurances have attacked neighboring states without warning is obviously untrue, for in such circumstances the attacker must know that he is doing wrong, and so far from it being unjust to punish him, it would be unjust if his wrong were allowed to go unpunished. Occupying the positions they did in the Government of Germany, the defendants, or at least some of them, must have known of the treaties signed by Germany, outlawing recourse to war for the settlement of international disputes; they must have known that they were acting in defiance of all international law when in complete deliberation they carried out their designs of invasion and aggression. On this view of the case alone, it would appear that the maxim has no application to the present facts.

This view is strongly reinforced by a consideration of the state of international law in 1939, so far as aggressive war is concerned. The General Treaty for the Renunciation of War of 27 August 1928, more generally known as the Pact of Paris or the Kellogg-Briand Pact, was binding on 63 nations, including Germany, Italy, and Japan, at the outbreak of war in 1939. In the preamble, the signatories declared that they were:

> "Deeply sensible of their solemn duty to promote the welfare of mankind; persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples should be perpetuated . . . and all changes in their relations with one another should be sought only by pacific means . . . thus uniting civilized nations of the world in a common renunciation of war as an instrument of their national policy. . . ."

The first two articles are as follows:

> "Article I: The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies

and renounce it as an instrument of national policy in their relations to one another.

"Article II: The High Contracting Parties agree that the settlement or solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means."

The question is, what was the legal effect of this pact? The nations who signed the pact or adhered to it unconditionally condemned recourse to war for the future as an instrument of policy, and expressly renounced it. After the signing of the pact, any nation resorting to war as an instrument of national policy breaks the pact. In the opinion of the Tribunal, the solemn renunciation of war as an instrument of national policy necessarily involves the proposition that such a war is illegal in international law; and that those who plan and wage such a war, with its inevitable and terrible consequences, are committing a crime in so doing. War for the solution of international controversies undertaken as an instrument of national policy certainly includes a war of aggression, and such a war is therefore outlawed by the pact. As Mr. Henry L. Stimson, then Secretary of State of the United States, said in 1932:

"War between nations was renounced by the signatories of the Kellogg-Briand Treaty. This means that it has become throughout practically the entire world... an illegal thing. Hereafter, when nations engage in armed conflict, either one or both of them must be termed violators of this general treaty law.... We denounce them as law breakers."

But it is argued that the pact does not expressly enact that such wars are crimes, or set up courts to try those who make such wars. To that extent the same is true with regard to the laws of war contained in the Hague Convention. The Hague Convention of 1907 prohibited resort to certain methods of waging war. These included the inhumane treatment of prisoners, the employment of poisoned weapons, the improper use of flags of truce, and similar matters. Many of these prohibitions had been enforced long before the date of the Convention; but since 1907 they have certainly been crimes, punishable as offenses against the laws of war; yet the Hague Convention nowhere designates such practices as criminal, nor is any sentence prescribed, nor any mention made of a court to try and punish offenders. For many years past, however, military tribunals have tried and punished individuals guilty of violating the rules of land warfare laid down by this Convention. In the opinion of the Tribunal, those who wage aggressive war are doing that which is equally illegal, and of much greater moment than a breach of one of the rules of the Hague Convention. In interpreting the words of the Pact, it must be remembered that international law is

not the product of an international legislature, and that such international agreements as the Pact of Paris have to deal with general principles of law, and not with administrative matters of procedure. The law of war is to be found not only in treaties, but in the customs and practices of states which gradually obtained universal recognition, and from the general principles of justice applied by jurists and practiced by military courts. This law is not static, but by continual adaptation follows the needs of a changing world. Indeed, in many cases treaties do no more than express and define for more accurate reference the principles of law already existing.

The view which the Tribunal takes of the true interpretation of the pact is supported by the international history which preceded it. In the year 1923 the draft of a Treaty of Mutual Assistance was sponsored by the League of Nations. In Article I the treaty declared "that aggressive war is an international crime," and that the parties would "undertake that no one of them will be guilty of its commission." The draft treaty was submitted to 29 states, about half of whom were in favor of accepting the text. The principal objection appeared to be in the difficulty of defining the acts which would constitute "aggression," rather than any doubt as to the criminality of aggressive war. The preamble to the League of Nations 1924 Protocol for the Pacific Settlement of International Disputes ("Geneva Protocol"), after "recognizing the solidarity of the members of the international community," declared that "a war of aggression constitutes a violation of this solidarity and is an international crime." It went on to declare that the contracting parties were "desirous of facilitating the complete application of the system provided in the Covenant of the League of Nations for the pacific settlement of disputes between the states and of insuring the repression of international crimes." The Protocol was recommended to the members of the League of Nations by a unanimous resolution in the assembly of the 48 members of the League. These members included Italy and Japan, but Germany was not then a member of the League. Although the Protocol was never ratified, it was signed by the leading statesmen of the world, representing the vast majority of the civilized states and peoples, and may be regarded as strong evidence of the intention to brand aggressive war as an international crime.

At the meeting of the Assembly of the League of Nations on 24 September 1927, all the delegations then present (including the German, the Italian, and the Japanese) unanimously adopted a declaration concerning wars of aggression. The preamble to the declaration stated:

"The Assembly: Recognizing the solidarity which unites the community of nations; being inspired by a firm desire for

> the maintenance of general peace; being convinced that a war of aggression can never serve as a means of settling international disputes, and is in consequence an international crime. . . ."

The unanimous resolution of 18 February 1928 of 21 American republics at the Sixth (Havana) Pan-American Conference, declared that "war of aggression constitutes an international crime against the human species."

All these expressions of opinion, and others that could be cited, so solemnly made, reinforce the construction which the Tribunal placed upon the Pact of Paris, that resort to a war of aggression is not merely illegal, but is criminal. The prohibition of aggressive war demanded by the conscience of the world finds its expression in the series of pacts and treaties to which the Tribunal has just referred.

It is also important to remember that Article 227 of the Treaty of Versailles provided for the constitution of a special Tribunal, composed of representatives of five of the Allied and Associated Powers which had been belligerents in the first World War opposed to Germany, to try the former German Emperor "for a supreme offense against international morality and the sanctity of treaties." The purpose of this trial was expressed to be "to vindicate the solemn obligations of international undertakings, and the validity of international morality." In Article 228 of the Treaty, the German Government expressly recognized the right of the Allied Powers "to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war."

It was submitted that international law is concerned with the actions of sovereign states and provides no punishment for individuals; and further, that where the act in question is an act of state, those who carry it out are not personally responsible, but are protected by the doctrine of the sovereignty of the state. In the opinion of the Tribunal, both these submissions must be rejected. That international law imposes duties and liabilities upon individuals as well as upon states has long been recognized. In the recent case of *ex parte* Quirin (1942-317, US-1), before the Supreme Court of the United States, persons were charged during the war with landing in the United States for purposes of spying and sabotage. The late Chief Justice Stone, speaking for the Court, said:

> "From the very beginning of its history this Court has applied the law of war as including that part of the law of nations which prescribes for the conduct of war, the status, rights, and duties of enemy nations as well as enemy individuals."

He went on to give a list of cases tried by the courts, where individual offenders were charged with offenses against the laws of nations, and particularly the laws of war. Many other authorities could be cited, but enough has been said to show that individuals can be punished for violations of international law. Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.

The provisions of Article 228 of the Treaty of Versailles, already referred to, illustrate and enforce this view of individual responsibility.

The principle of international law which, under certain circumstances, protects the representatives of a state, cannot be applied to acts which are condemned as criminal by international law. The authors of these acts cannot shelter themselves behind their official position in order to be freed from punishment in appropriate proceedings. Article 7 of the Charter expressly declares:

> "The official position of defendants, whether as heads of state, or responsible officials in government departments, shall not be considered as freeing them from responsibility, or mitigating punishment."

On the other hand the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual state. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state, if the state in authorizing action moves outside its competence under international law.

It was also submitted on behalf of most of these defendants that in doing what they did they were acting under the orders of Hitler, and therefore cannot be held responsible for the acts committed by them in carrying out these orders. The Charter specifically provides in Article 8:

> "The fact that the defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment."

The provisions of this article are in conformity with the law of all nations. That a soldier was ordered to kill or torture in violation of the international law of war has never been recognized as a defense to such acts of brutality, though, as the Charter here provides, the order may be urged in mitigation of the punishment. The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible.

The Law as to the Common Plan or Conspiracy

In the previous recital of the facts relating to aggressive war, it is clear that planning and preparation had been carried out in the most systematic way at every stage of the history.

Planning and preparation are essential to the making of war. In the opinion of the Tribunal aggressive war is a crime under international law. The Charter defines this offense as planning, preparation, initiation or waging of a war of aggression "or participation in a Common Plan or Conspiracy for the accomplishment... of the foregoing." The Indictment follows this distinction. Count One charges the Common Plan or Conspiracy. Count Two charges the planning and waging of war. The same evidence has been introduced to support both Counts. We shall therefore discuss both Counts together, as they are in substance the same. The defendants have been charged under both Counts, and their guilt under each Count must be determined.

The "Common Plan or Conspiracy" charged in the Indictment covers 25 years, from the formation of the Nazi Party in 1919 to the end of the war in 1945. The Party is spoken of as "the instrument of cohesion among the defendants" for carrying out the purposes of the conspiracy—the overthrowing of the Treaty of Versailles, acquiring territory lost by Germany in the last war and "Lebensraum" in Europe, by the use, if necessary, of armed force, of aggressive war. The "seizure of power" by the Nazis, the use of terror, the destruction of trade unions, the attack on Christian teaching and on Churches, the persecution of Jews, the regimentation of youth—all these are said to be steps deliberately taken to carry out the common plan. It found expression, so it is alleged, in secret rearmament, the withdrawal by Germany from the Disarmament Conference and the League of Nations, universal military service, and seizure of the Rhineland. Finally, according to the Indictment, aggressive action was planned and carried out against Austria and Czechoslovakia in 1936-1938, followed by the planning and waging of war against Poland, and, successively, against 10 other countries.

The Prosecution says, in effect, that any significant participation in the affairs of the Nazi Party or Government is evidence of a participation in a conspiracy that is in itself criminal. Conspiracy is not defined in the Charter. But in the opinion of the Tribunal the conspiracy must be clearly outlined in its criminal purpose. It must not be too far removed from the time of decision and of action. The planning, to be criminal, must not rest merely on the declarations of a party program, such as are found in the 25 points of the Nazi Party, announced in 1920, or the political affirmations expressed in *Mein Kampf* in later years. The Tribunal must

examine whether a concrete plan to wage war existed, and determine the participants in that concrete plan.

It is not necessary to decide whether a single master conspiracy between the defendants has been established by the evidence. The seizure of power by the Nazi Party, and the subsequent domination by the Nazi State of all spheres of economic and social life must of course be remembered when the later plans for waging war are examined. That plans were made to wage war as early as 5 November 1937, and probably before that, is apparent. And thereafter, such preparations continued in many directions, and against the peace of many countries. Indeed the threat of war—and war itself if necessary—was an integral part of the Nazi policy. But the evidence establishes with certainty the existence of many separate plans rather than a single conspiracy embracing them all. That Germany was rapidly moving to complete dictatorship from the moment that the Nazis seized power, and progressively in the direction of war, has been overwhelmingly shown in the ordered sequence of aggressive acts and wars already set out in this Judgment.

In the opinion of the Tribunal, the evidence establishes the common planning to prepare and wage war by certain of the defendants. It is immaterial to consider whether a single conspiracy to the extent and over the time set out in the Indictment has been conclusively proved. Continued planning, with aggressive war as the objective, has been established beyond doubt. The truth of the situation was well stated by Paul Schmidt, official interpreter of the German Foreign Office, as follows:

> "The general objectives of the Nazi leadership were apparent from the start, namely the domination of the European continent, to be achieved first by the incorporation of all German-speaking groups in the Reich, and secondly, by territorial expansion under the slogan 'Lebensraum.' The execution of these basic objectives, however, seemed to be characterized by improvisation. Each succeeding step was apparently carried out as each new situation arose, but all consistent with the ultimate objectives mentioned above."

The argument that such common planning cannot exist where there is complete dictatorship is unsound. A plan in the execution of which a number of persons participate is still a plan, even though conceived by only one of them; and those who execute the plan do not avoid responsibility by showing that they acted under the direction of the man who conceived it. Hitler could not make aggressive war by himself. He had to have the co-operation of statesmen, military leaders, diplomats, and business men. When

they, with knowledge of his aims, gave him their co-operation, they made themselves parties to the plan he had initiated. They are not to be deemed innocent because Hitler made use of them, if they knew what they were doing. That they were assigned to their tasks by a dictator does not absolve them from responsibility for their acts. The relation of leader and follower does not preclude responsibility here any more than it does in the comparable tyranny of organized domestic crime.

Count One, however, charges not only the conspiracy to commit aggressive war, but also to commit War Crimes and Crimes against Humanity. But the Charter does not define as a separate crime any conspiracy except the one to commit acts of aggressive war. Article 6 of the Charter provides:

> "Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan."

In the opinion of the Tribunal these words do not add a new and separate crime to those already listed. The words are designed to establish the responsibility of persons participating in a common plan. The Tribunal will therefore disregard the charges in Count One that the defendants conspired to commit War Crimes and Crimes against Humanity, and will consider only the common plan to prepare, initiate and wage aggressive war.

THE PRESIDENT: I now ask Judge Parker to continue the reading of the Judgment.

JUDGE JOHN J. PARKER (Alternate Member of the Tribunal for the United States):

War Crimes and Crimes against Humanity

The evidence relating to war crimes has been overwhelming in its volume and its detail. It is impossible for this Judgment adequately to review it, or to record the mass of documentary and oral evidence that has been presented. The truth remains that war crimes were committed on a vast scale, never before seen in the history of war. They were perpetrated in all the countries occupied by Germany, and on the high seas, and were attended by every conceivable circumstance of cruelty and horror. There can be no doubt that the majority of them arose from the Nazi conception of "total war," with which the aggressive wars were waged. For in this conception of "total war," the moral ideas underlying the conventions which seek to make war more humane are no longer

regarded as having force or validity. Everything is made subordinate to the overmastering dictates of war. Rules, regulations, assurances, and treaties, all alike, are of no moment; and so, freed from the restraining influence of international law, the aggressive war is conducted by the Nazi leaders in the most barbaric way. Accordingly, war crimes were committed when and wherever the Führer and his close associates thought them to be advantageous. They were for the most part the result of cold and criminal calculation.

On some occasions, war crimes were deliberately planned long in advance. In the case of the Soviet Union, the plunder of the territories to be occupied, and the ill-treatment of the civilian population, were settled in minute detail before the attack was begun. As early as the autumn of 1940, the invasion of the territories of the Soviet Union was being considered. From that date onwards, the methods to be employed in destroying all possible opposition were continuously under discussion.

Similarly, when planning to exploit the inhabitants of the occupied countries for slave labor on the very greatest scale, the German Government conceived it as an integral part of the war economy, and planned and organized this particular war crime down to the last elaborate detail.

Other war crimes, such as the murder of prisoners of war who had escaped and been recaptured, or the murder of Commandos or captured airmen, or the destruction of the Soviet commissars, were the result of direct orders circulated through the highest official channels.

The Tribunal proposes, therefore, to deal quite generally with the question of war crimes, and to refer to them later when examining the responsibility of the individual defendants in relation to them. Prisoners of war were ill-treated and tortured and murdered, not only in defiance of the well-established rules of international law, but in complete disregard of the elementary dictates of humanity. Civilian populations in occupied territories suffered the same fate. Whole populations were deported to Germany for the purposes of slave labor upon defense works, armament production and similar tasks connected with the war effort. Hostages were taken in very large numbers from the civilian populations in all the occupied countries and were shot as suited the German purposes. Public and private property was systematically plundered and pillaged in order to enlarge the resources of Germany at the expense of the rest of Europe. Cities and towns and villages were wantonly destroyed without military justification or necessity.

Murder and Ill-Treatment of Prisoners of War

Article 6 (b) of the Charter defines War Crimes in these words:

> "War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity."

In the course of the war, many Allied soldiers who had surrendered to the Germans were shot immediately, often as a matter of deliberate, calculated policy. On 18 October 1942, the Defendant Keitel circulated a directive authorized by Hitler, which ordered that all members of Allied "Commando" units, often when in uniform and whether armed or not, were to be "slaughtered to the last man," even if they attempted to surrender. It was further provided that if such Allied troops came into the hands of the military authorities after being first captured by the local Police, or in any other way, they should be handed over immediately to the SD. This order was supplemented from time to time, and was effective throughout the remainder of the war, although after the Allied landings in Normandy in 1944 it was made clear that the order did not apply to "Commandos" captured within the immediate battle area. Under the provisions of this order, Allied "Commando" troops, and other military units operating independently, lost their lives in Norway, France, Czechoslovakia, and Italy. Many of them were killed on the spot, and in no case were those who were executed later in concentration camps ever given a trial of any kind. For example, an American military mission which landed behind the German front in the Balkans in January 1945, numbering about 12 to 15 men and wearing uniform, were taken to Mauthausen under the authority of this order, and according to the affidavit of Adolf Zutte, the adjutant of the Mauthausen Concentration Camp, all of them were shot.

In March 1944 the OKH issued the "Kugel," or "Bullet," decree, which directed that every escaped officer and NCO prisoner of war who had not been put to work, with the exception of British and American prisoners of war, should on recapture be handed over to the Sipo and SD. This order was distributed by the Sipo and SD to their regional offices. These escaped officers and NCO's were to be sent to the concentration camp at Mauthausen, to be executed upon arrival by means of a bullet shot in the neck.

In March 1944 50 officers of the British Royal Air Force, who escaped from the camp at Sagan where they were confined as prisoners, were shot on recapture, on the direct orders of Hitler. Their bodies were immediately cremated, and the urns containing their ashes were returned to the camp. It was not contended by the defendants that this was other than plain murder, in complete violation of international law.

When Allied airmen were forced to land in Germany, they were sometimes killed at once by the civilian population. The Police were instructed not to interfere with these killings, and the Ministry of Justice was informed that no one should be prosecuted for taking part in them.

The treatment of Soviet prisoners of war was characterized by particular inhumanity. The death of so many of them was not due merely to the action of individual guards, or to the exigencies of life in the camps. It was the result of systematic plans to murder. More than a month before the German invasion of the Soviet Union, the OKW were making special plans for dealing with political representatives serving with the Soviet Armed Forces who might be captured. One proposal was that "political commissars of the Army are not recognized as prisoners of war, and are to be liquidated, at the latest in the transient prisoners-of-war camps." The Defendant Keitel gave evidence that instructions incorporating this proposal were issued to the German Army.

On 8 September 1941, regulations for the treatment of Soviet prisoners of war in all prisoner-of-war camps were issued, signed by General Reinecke, the head of the prisoner-of-war department of the High Command. These orders stated:

> "The Bolshevist soldier has therefore lost all claim to treatment as an honorable opponent, in accordance with the Geneva Convention.... The order for ruthless and energetic action must be given at the slightest indication of insubordination, especially in the case of Bolshevist fanatics. Insubordination, active or passive resistance, must be broken immediately by force of arms (bayonets, butts, and firearms).... Anyone carrying out the order who does not use his weapons, or does so with insufficient energy, is punishable.... Prisoners of war attempting escape are to be fired on without previous challenge. No warning shot must ever be fired.... The use of arms against prisoners of war is as a rule legal."

The Soviet prisoners of war were left without suitable clothing; the wounded without medical care; they were starved, and in many cases left to die.

On 17 July 1941, the Gestapo issued an order providing for the killing of all Soviet prisoners of war who were or might be dangerous to National Socialism. The order recited:

"The mission of the commanders of the Sipo and SD stationed in Stalags is the political investigation of all camp inmates, the elimination and further treatment[4]) (a) of all political, criminal, or in some other way unbearable elements among them, (b) of those persons who could be used for the reconstruction of the occupied territories.... Further, the commanders[5]) must make efforts from the beginning to seek out among the prisoners elements which appear reliable, regardless of whether there are Communists concerned or not, in order to use them for intelligence purposes inside of the camp, and if advisable, later in the occupied territories also. By use of such informers, and by use of all other existing possibilities, the discovery of all elements to be eliminated among the prisoners must proceed step by step at once....

"Above all, the following must be discovered: all important functionaries of State and Party, especially professional revolutionaries... all Political Commissars in the Red Army, leading personalities of the State... leading personalities of the business world, members of the Soviet Russian Intelligence,[6]) all Jews, all persons who are found to be agitators or fanatical Communists.... Executions are not to be held in the camp or in the immediate vicinity of the camp.... The prisoners are to be taken for special treatment if possible into the former Soviet Russian territory."

The affidavit of Warlimont, Deputy Chief of Staff of the Wehrmacht, and the testimony of Ohlendorf, former Chief of Amt III of the RSHA, and of Lahousen, the head of one of the sections of the Abwehr, the Wehrmacht's intelligence service, all indicate the thoroughness with which this order was carried out.

The affidavit of Kurt Lindow, a former Gestapo official, states:

"... There existed in the prisoner-of-war camps on the Eastern Front small screening teams (Einsatzkommandos), headed by lower-ranking members of the Secret Police (Gestapo). These teams were assigned to the camp commanders and had the job to segregate the prisoners of war who were candidates for execution according to the orders that had been given, and to report them to the office of the Secret Police."

On 23 October 1941 the camp commander of the Gross-Rosen Concentration Camp reported to Müller, Chief of the Gestapo, a list of the Soviet prisoners of war who had been executed there on the previous day.

An account of the general conditions and treatment of Soviet prisoners of war during the first 8 months after the German attack upon Russia was given in a letter which the Defendant Rosenberg sent to the Defendant Keitel on 28 February 1942:

"The fate of the Soviet prisoners of war in Germany is on the contrary a tragedy of the greatest extent.... A large part of them has starved, or died because of the hazards of the weather. Thousands also died from spotted fever....[7])

"...the camp commanders have forbidden the civilian population to put food at the disposal of the prisoners, and they have rather let them starve to death....

"...in many cases, when prisoners of war could no longer keep up on the march because of hunger and exhaustion, they were shot before the eyes of the horrified population, and the corpses were left.

"In numerous camps no shelter for the prisoners of war was provided at all. They lay under the open sky during rain or snow. Even tools were not made available to dig holes or caves."

In some cases Soviet prisoners of war were branded with a special permanent mark. There was put in evidence the OKW order dated 20 July 1942 which laid down that:

"The brand is to take the shape of an acute angle of about 45 degrees, with the long side to be 1 cm. in length, pointing upwards and burnt on the left buttock... This brand is made with the aid of a lancet available in any military unit. The coloring used is Chinese ink."

The carrying-out of this order was the responsibility of the military authorities, though it was widely circulated by the Chief of the Sipo and the SD to German police officials for information.

Soviet prisoners of war were also made the subject of medical experiments of the most cruel and inhuman kind. In July 1943 experimental work was begun in preparation for a campaign of bacteriological warfare; Soviet prisoners of war were used in these medical experiments, which more often than not proved fatal. In connection with this campaign for bacteriological warfare, preparations were also made for the spreading of bacterial emulsions from planes, with the object of producing widespread failures of crops and consequent starvation. These measures were never applied, possibly because of the rapid deterioration of Germany's military position.

The argument in defense of the charge with regard to the murder and ill-treatment of Soviet prisoners of war, that the U.S.S.R. was not a party to the Geneva Convention, is quite without

foundation. On 15 September 1941 Admiral Canaris protested against the regulations for the treatment of Soviet prisoners of war signed by General Reinecke on 8 September 1941. He then stated:

> "The Geneva Convention for the treatment of prisoners of war is not binding in the relationship between Germany and the U.S.S.R. Therefore only the principles of general international law on the treatment of prisoners of war apply. Since the 18th century these have gradually been established along the lines that war captivity is neither revenge nor punishment, but solely protective custody, the only purpose of which is to prevent the prisoners of war from further participation in the war. This principle was developed in accordance with the view held by all armies that it is contrary to military tradition to kill or injure helpless people.... The decrees for the treatment of Soviet prisoners of war enclosed are based on a fundamentally different viewpoint."

This protest, which correctly stated the legal position, was ignored. The Defendant Keitel made a note on this memorandum:

> "The objections arise from the military concept of chivalrous warfare. This is the destruction of an ideology. Therefore I approve and back the measures."

Murder and Ill-Treatment of Civilian Population

Article 6 (b) of the Charter provides that "ill-treatment of civilian population of or in occupied territory... killing of hostages ... wanton destruction of cities, towns or villages..." shall be a War Crime. In the main, these provisions are merely declaratory of the existing laws of war as expressed by the Hague Convention, Article 46, which stated: "Family honor and rights, the lives of persons and private property, as well as religious convictions and practices, must be respected."

The territories occupied by Germany were administered in violation of the laws of war. The evidence is quite overwhelming of a systematic rule of violence, brutality, and terror. On 7 December 1941 Hitler issued the directive since known as the "Nacht und Nebel Erlass" (Night and Fog Decree), under which persons who committed offenses against the Reich or the German forces in occupied territories, except where the death sentence was certain, were to be taken secretly to Germany and handed over to the Sipo and SD for trial or punishment in Germany. This decree was signed by the Defendant Keitel. After these civilians arrived in Germany, no word of them was permitted to reach the country from which they came, or their relatives; even in cases when they died awaiting trial the families were not informed, the purpose being to create

anxiety in the minds of the family of the arrested person. Hitler's purpose in issuing this decree was stated by the Defendant Keitel in a covering letter, dated 12 December 1941, to be as follows:

> "Efficient and enduring intimidation can only be achieved either by capital punishment or by measures by which the relatives of the criminal and the population do not know the fate of the criminal. This aim is achieved when the criminal is transferred to Germany."

Even persons who were only suspected of opposing any of the policies of the German occupation authorities were arrested, and on arrest were interrogated by the Gestapo and the SD in the most shameful manner. On 12 June 1942 the Chief of the Sipo and SD published, through Müller, the Gestapo Chief, an order authorizing the use of "third degree" methods of interrogation, where preliminary investigation had indicated that the person could give information on important matters, such as subversive activities, though not for the purpose of extorting confessions of the prisoner's own crimes. This order provided:

> "... Third degree may, under this supposition, only be employed against Communists, Marxists, Jehovah's Witnesses, saboteurs, terrorists, members of resistance movements, parachute agents, anti-social elements, Polish or Soviet Russian loafers or tramps[8]); in all other cases my permission must first be obtained.... Third degree can, according to circumstances, consist amongst other methods of very simple diet (bread and water), hard bunk, dark cell, deprivation of sleep, exhaustive drilling, also in flogging (for more than 20 strokes a doctor must be consulted)."

The brutal suppression of all opposition to the German occupation was not confined to severe measures against suspected members of resistance movements themselves, but was also extended to their families. On 19 July 1944, the Commander of the Sipo and SD in the district of Radom, in Poland, published an order, transmitted through the Higher SS and Police Leaders, to the effect that in all cases of assassination or attempted assassination of Germans, or where saboteurs had destroyed vital installations, not only the guilty person, but also all his or her male relatives should be shot, and female relatives over 16 years of age put into a concentration camp.

In the summer of 1944 the Einsatzkommando of the Sipo and SD at Luxembourg caused persons to be confined at Sachsenhausen Concentration Camp because they were relatives of deserters, and were therefore "expected to endanger the interest of the German Reich if allowed to go free."

The practice of keeping hostages to prevent and to punish any form of civil disorder was resorted to by the Germans; an order issued by the Defendant Keitel on 16 of September 1941 spoke in terms of fifty or a hundred lives from the occupied areas of the Soviet Union for one German life taken. The order stated that "it should be remembered that a human life in unsettled countries frequently counts for nothing and a deterrent effect can be obtained only by unusual severity." The exact number of persons killed as a result of this policy is not known, but large numbers were killed in France and the other occupied territories in the West, while in the East the slaughter was on an even more extensive scale. In addition to the killing of hostages, entire towns were destroyed in some cases; such massacres as those of Oradour-sur-Glane in France and Lidice in Czechoslovakia, both of which were described to the Tribunal in detail, are examples of the organized use of terror by the occupying forces to beat down and destroy all opposition to their rule.

One of the most notorious means of terrorizing the people in occupied territories was the use of concentration camps. They were first established in Germany at the moment of the seizure of power by the Nazi Government. Their original purpose was to imprison without trial all those persons who were opposed to the Government, or who were in any way obnoxious to German authority. With the aid of a secret police force, this practice was widely extended, and in the course of time concentration camps became places of organized and systematic murder, where millions of people were destroyed.

In the administration of the occupied territories the concentration camps were used to destroy all opposition groups. The persons arrested by the Gestapo were as a rule sent to concentration camps. They were conveyed to the camps, in many cases without any care whatever being taken for them, and great numbers died on the way. Those who arrived at the camp were subject to systematic cruelty. They were given hard physical labor, inadequate food, clothes, and shelter, and were subject at all times to the rigors of a soulless regime, and the private whims of individual guards. In the report of the War Crimes Branch of the Judge Advocate's Section of the 3d US Army, under date 21 June 1945, the conditions at the Flossenbürg Concentration Camp were investigated, and one passage may be quoted:

> "Flossenbürg Concentration Camp can best be described as a factory dealing in death. Although this camp had in view the primary object of putting to work the mass slave labor, another of its primary objects was the elimination of human lives by the methods employed in handling the prisoners.

Hunger and starvation rations, sadism, inadequate clothing, medical neglect, disease, beatings, hangings, freezings, forced suicides, shooting, *et cetera,* all played a major role in obtaining their object. Prisoners were murdered at random; spite killings against Jews were common, injections of poison and shooting in the neck were everyday occurrences; epidemics of typhoid and spotted fever were permitted to run rampant as a means of eliminating prisoners; life in this camp meant nothing. Killing became a common thing, so common that a quick death was welcomed by the unfortunate ones."

A certain number of the concentration camps were equipped with gas chambers for the wholesale destruction of the inmates, and with furnaces for the burning of the bodies. Some of them were in fact used for the extermination of Jews as part of the "final solution" of the Jewish problem. Most of the non-Jewish inmates were used for labor, although the conditions under which they worked made labor and death almost synonymous terms. Those inmates who became ill and were unable to work were either destroyed in the gas chambers or sent to special infirmaries, where they were given entirely inadequate medical treatment, worse food if possible than the working inmates, and left to die.

The murder and ill-treatment of civilian populations reached its height in the treatment of the citizens of the Soviet Union and Poland. Some four weeks before the invasion of Russia began, special task forces of the Sipo and SD, called Einsatzgruppen, were formed on the orders of Himmler for the purpose of following the German armies into Russia, combating partisans and members of resistance groups, and exterminating the Jews and Communist leaders, and other sections of the population. In the beginning, four such Einsatzgruppen were formed, one operating in the Baltic states, one toward Moscow, one toward Kiev, and one operating in the south of Russia. Ohlendorf, former Chief of Amt III of the RSHA, who led the fourth group, stated in his affidavit:

"When the German Army invaded Russia, I was leader of Einsatzgruppe D, in the southern sector, and in the course of the year during which I was leader of the Einsatzgruppe D it liquidated approximately 90,000 men, women, and children. The majority of those liquidated were Jews, but there were also among them some Communist functionaries."

In an order issued by the Defendant Keitel on 23 July 1941, and drafted by the Defendant Jodl, it was stated that:

"In view of the vast size of the occupied areas in the East, the forces available for establishing security in these areas will be sufficient only if all resistance is punished, not by legal prosecution of the guilty, but by the spreading of such

terror by the Armed Forces as is alone appropriate to eradicate every inclination to resist among the population.... Commanders must find the means of keeping order by applying suitable draconian measures."

The evidence has shown that this order was ruthlessly carried out in the territory of the Soviet Union and in Poland. A significant illustration of the measures actually applied occurs in the document which was sent in 1943 to the Defendant Rosenberg by the Reich Commissioner for Eastern Territories, who wrote:

"It should be possible to avoid atrocities and to bury those who have been liquidated. To lock men, women, and children into barns and set fire to them does not appear to be a suitable method of combating bands, even if it is desired to exterminate the population. This method is not worthy of the German cause, and damages our reputation severely."

The Tribunal has before it an affidavit of one Hermann Graebe, dated 10 November 1945, describing the immense mass murders which he witnessed. He was the manager and engineer in charge of the branch of the Solingen firm of Joseph Jung in Sdolbunov, Ukraine, from September 1941 to January 1944. He first of all described the attack upon the Jewish ghetto at Rovno:

"...then the electric floodlights which had been erected all round the ghetto were switched on. SS and militia details of four to six members entered, or at least tried to enter, the houses. Where the doors and windows were closed, and the inhabitants did not open upon the knocking, the SS men and militia broke the windows, forced the doors with beams and crowbars, and entered the dwellings. The owners were driven on to the street just as they were, regardless of whether they were dressed or whether they had been in bed.... Car after car was filled. Over it hung the screaming of women and children, the cracking of whips and rifle shots."

Graebe then described how a mass execution at Dubno, which he witnessed on 5 October 1942, was carried out:

"Now I heard shots in quick succession from behind one of the earth mounds. The people who had got off the trucks, men, women, and children of all ages, had to undress upon the orders of an SS man, who carried a riding or dog whip.... Without screaming or crying, these people undressed, stood around by families, kissed each other, said farewells, and waited for the command of another SS man, who stood near the excavation, also with a whip in his hand.... At that moment the SS man at the excavation called something to his comrade. The latter counted off about 20 persons, and instructed them to walk behind the earth mound.... I walked

around the mound and stood in front of a tremendous grave; closely pressed together, the people were lying on top of each other so that only their heads were visible. The excavation was already two-thirds full; I estimated that it contained about a thousand people.... Now already the next group approached, descended into the excavation, lined themselves up against the previous victims and were shot."

The foregoing crimes against the civilian population are sufficiently appalling, and yet the evidence shows that at any rate in the East, the mass murders and cruelties were not committed solely for the purpose of stamping out opposition or resistance to the German occupying forces. In Poland and the Soviet Union these crimes were part of a plan to get rid of whole native populations by expulsion and annihilation, in order that their territory could be used for colonization by Germans. Hitler had written in *Mein Kampf* on these lines, and the plan was clearly stated by Himmler in July 1942, when he wrote:

"It is not our task to germanize the East in the old sense, that is to teach the people there the German language and the German law, but to see to it that only people of purely Germanic blood live in the East."

In August 1942 the policy for the Eastern Territories as laid down by Bormann was summarized by a subordinate of Rosenberg as follows:

"The Slavs are to work for us. Insofar as we do not need them, they may die. Therefore, compulsory vaccination and German health services are superfluous. The fertility of the Slavs is undesirable."

It was Himmler again who stated in October 1943:

"What happens to a Russian, a Czech, does not interest me in the slightest.[9]) What the nations can offer in the way of good blood of our type, we will take. If necessary, by kidnapping their children and raising them here with us. Whether nations live in prosperity or starve to death interests me only insofar as we need them as slaves for our culture, otherwise it is of no interest to me."

In Poland the intelligentsia had been marked down for extermination as early as September 1939, and in May 1940 the Defendant Frank wrote in his diary of "taking advantage of the focussing of world interest on the Western Front, by wholesale liquidation of thousands of Poles, first leading representatives of the Polish intelligentsia." Earlier, Frank had been directed to reduce the "entire Polish economy to an absolute minimum necessary for bare existence. The Poles shall be the slaves of the Greater German World Empire." In January 1940 he recorded in his diary that

"cheap labor must be removed from the Government General by hundreds of thousands. This will hamper the native biological propagation." So successfully did the Germans carry out this policy in Poland that by the end of the war one third of the population had been killed, and the whole of the country devastated.

It was the same story in the occupied area of the Soviet Union. At the time of the launching of the German attack in June 1941 Rosenberg told his collaborators:

> "The object of feeding the German people stands this year without a doubt at the top of the list of Germany's claims on the East, and there the southern territories and the northern Caucasus will have to serve as a balance for the feeding of the German people.... A very extensive evacuation will be necessary, without any doubt, and it is sure that the future will hold very hard years in store for the Russians."

Three or four weeks later Hitler discussed with Rosenberg, Göring, Keitel, and others his plan for the exploitation of the Soviet population and territory, which included among other things the evacuation of the inhabitants of the Crimea and its settlement by Germans.

A somewhat similar fate was planned for Czechoslovakia by the Defendant Von Neurath, in August 1940; the intelligentsia were to be "expelled," but the rest of the population was to be germanized rather than expelled or exterminated, since there was a shortage of Germans to replace them.

In the West the population of Alsace were the victims of a German "expulsion action." Between July and December 1940, 105,000 Alsatians were either deported from their homes or prevented from returning to them. A captured German report dated 7 August 1942 with regard to Alsace states that:

> "The problem of race will be given first consideration, and this in such a manner that persons of racial value will be deported to Germany proper, and racially inferior persons to France."

THE PRESIDENT: The Tribunal will adjourn for 10 minutes.

[A recess was taken.]

THE PRESIDENT: I now ask General Nikitchenko to continue the reading of the Judgment.

Pillage of Public and Private Property

MAJOR GENERAL I. T. NIKITCHENKO (Member of the Tribunal for the U.S.S.R.): Article 49 of the Hague Convention provides that an occupying power may levy a contribution of money from the

occupied territory to pay for the needs of the army of occupation, and for the administration of the territory in question. Article 52 of the Hague Convention provides that an occupying power may make requisitions in kind only for the needs of the army of occupation, and that these requisitions shall be in proportion to the resources of the country. These articles, together with Article 48, dealing with the expenditure of money collected in taxes, and Articles 53, 55, and 56, dealing with public property, make it clear that under the rules of war, the economy of an occupied country can only be required to bear the expenses of the occupation, and these should not be greater than the economy of the country can reasonably be expected to bear. Article 56 reads as follows:

> "The property of municipalities, of religious, charitable, educational, artistic, and scientific institutions, although belonging to the state, is to be accorded the same standing as private property. All premeditated seizure, destruction, or damage of such institutions, historical monuments, works of art and science, is prohibited and should be prosecuted."

The evidence in this case has established, however, that the territories occupied by Germany were exploited for the German war effort in the most ruthless way, without consideration of the local economy, and in consequence of a deliberate design and policy. There was in truth a systematic "plunder of public or private property," which was criminal under Article 6 (b) of the Charter. The German occupation policy was clearly stated in a speech made by the Defendant Göring on 6 August 1942 to the various German authorities in charge of occupied territories:

> "God knows, you are not sent out there to work for the welfare of the people in your charge, but to get the utmost out of them, so that the German people can live. That is what I expect of your exertions. This everlasting concern about foreign people must cease now, once and for all. I have here before me reports on what you are expected to deliver. It is nothing at all when I consider your territories. It makes no difference to me in this connection if you say that your people will starve."

The methods employed to exploit the resources of the occupied territories to the full varied from country to country. In some of the occupied countries in the East and the West, this exploitation was carried out within the framework of the existing economic structure. The local industries were put under German supervision, and the distribution of war materials was rigidly controlled. The industries thought to be of value to the German war effort were compelled to continue, and most of the rest were closed down altogether. Raw materials and the finished products alike

were confiscated for the needs of the German industry. As early as 19 October 1939 the Defendant Göring had issued a directive giving detailed instructions for the administration of the occupied territories; it provided:

> "The task for the economic treatment of the various administrative regions is different, depending on whether a country is involved which will be incorporated politically into the German Reich, or whether we are dealing with the Government General, which in all probability will not be made a part of Germany. In the first-mentioned territories, the... safeguarding of all their productive facilities and supplies must be aimed at, as well as a complete incorporation into the Greater German economic system at the earliest possible time. On the other hand, there must be removed from the territories of the Government General all raw materials, scrap materials, machines, *et cetera,* which are of use for the German war economy. Enterprises which are not absolutely necessary for the meager maintenance of the naked existence of the population must be transferred to Germany, unless such transfer would require an unreasonably long period of time, and would make it more practicable to exploit those enterprises by giving them German orders, to be executed at their present location."

As a consequence of this order, agricultural products, raw materials needed by German factories, machine tools, transportation equipment, other finished products, and even foreign securities and holdings of foreign exchange were all requisitioned and sent to Germany. These resources were requisitioned in a manner out of all proportion to the economic resources of those countries, and resulted in famine, inflation, and an active black market. At first the German occupation authorities attempted to suppress the black market, because it was a channel of distribution keeping local products out of German hands. When attempts at suppression failed, a German purchasing agency was organized to make purchases for Germany on the black market, thus carrying out the assurance made by the Defendant Göring that it was "necessary that all should know that if there is to be famine anywhere, it shall in no case be in Germany."

In many of the occupied countries of the East and the West, the authorities maintained the pretense of paying for all the property which they seized. This elaborate pretense of payment merely disguised the fact that the goods sent to Germany from these occupied countries were paid for by the occupied countries themselves, either by the device of excessive occupation costs or by forced

loans in return for a credit balance on a "clearing account," which was an account merely in name.

In most of the occupied countries of the East even this pretense of legality was not maintained; economic exploitation became deliberate plunder. This policy was first put into effect in the administration of the Government General in Poland. The main exploitation of the raw materials in the East was centered on agricultural products, and very large amounts of food were shipped from the Government General to Germany.

The evidence of the widespread starvation among the Polish people in the Government General indicates the ruthlessness and the severity with which the policy of exploitation was carried out.

The occupation of the territories of the U.S.S.R. was characterized by premeditated and systematic looting. Before the attack on the U.S.S.R., an economic staff—Oldenburg—was organized to insure the most efficient exploitation of Soviet territories. The German armies were to be fed out of Soviet territory, even if "many millions of people will be starved to death." An OKW directive issued before the attack said: "To obtain the greatest possible quantity of food and crude oil for Germany—that is the main economic purpose of the campaign."

Similarly, a declaration by the Defendant Rosenberg of 20 June 1941 had advocated the use of the produce from southern Russia and of the northern Caucasus to feed the German people, saying:

> "We see absolutely no reason for any obligation on our part to feed also the Russian people with the products of that surplus territory. We know that this is a harsh necessity, bare of any feelings."

When the Soviet territory was occupied, this policy was put into effect; there was a large-scale confiscation of agricultural supplies, with complete disregard of the needs of the inhabitants of the occupied territory.

In addition to the seizure of raw materials and manufactured articles, a wholesale seizure was made of art treasures, furniture, textiles, and similar articles in all the invaded countries.

The Defendant Rosenberg was designated by Hitler on 29 January 1940 head of the Center for National Socialist Ideological and Educational Research, and thereafter the organization known as the "Einsatzstab Rosenberg" conducted its operations on a very great scale. Originally designed for the establishment of a research library, it developed into a project for the seizure of cultural treasures. On 1 March 1942, Hitler issued a further decree, authorizing Rosenberg to search libraries, lodges, and cultural establishments, to seize material from these establishments, as well as

cultural treasures owned by Jews. Similar directions were given where the ownership could not be clearly established. The decree directed the co-operation of the Wehrmacht High Command, and indicated that Rosenberg's activities in the West were to be conducted in his capacity as Reichsleiter, and in the East in his capacity as Reichsminister. Thereafter, Rosenberg's activities were extended to the occupied countries. The report of Robert Scholz, Chief of the special staff for Pictorial Art, stated:

> "During the period from March 1941 to July 1944 the special staff for Pictorial Art brought into the Reich 29 large shipments, including 137 freight cars with 4,174 cases of art works."

The report of Scholz refers to 25 portfolios of pictures of the most valuable works of art collections seized in the West, which portfolios were presented to the Führer. Thirty-nine volumes, prepared by the Einsatzstab, contained photographs of paintings, textiles, furniture, candelabra, and numerous other objects of art, and illustrated the value and magnitude of the collection which had been made. In many of the occupied countries private collections were robbed, libraries were plundered, and private houses were pillaged.

Museums, palaces, and libraries in the occupied territories of the U.S.S.R. were systematically looted. Rosenberg's Einsatzstab, Ribbentrop's special "Battalion," the Reichskommissare, and representatives of the Military Command seized objects of cultural and historical value belonging to the people of the Soviet Union, which were sent to Germany.

Thus, the Reichskommissar of the Ukraine removed paintings and objects of art from Kiev and Kharkov and sent them to East Prussia. Rare volumes and objects of art from the palaces of Peterhof, Tsarskoye Selo, and Pavlovsk were shipped to Germany. In his letter to Rosenberg of 3 October 1941 Reichskommissar Kube stated that the value of the objects of art taken from Bielorussia ran into millions of roubles. The scale of this plundering can also be seen in the letter sent from Rosenberg's department to Von Milde-Schreden in which it is stated that during the month of October 1943 alone, about 40 box-cars loaded with objects of cultural value were transported to the Reich.

With regard to the suggestion that the purpose of the seizure of art treasures was protective and meant for their preservation, it is necessary to say a few words. On 1 December 1939, Himmler, as the Reich Commissioner for the "strengthening of Germanism," issued a decree to the regional officers of the Secret Police in the annexed eastern territories, and to the commanders of the Security Service in Radom, Warsaw, and Lublin. This decree contained

administrative directions for carrying out the art seizure program, and in Clause 1 it is stated:

> "To strengthen Germanism in the defense of the Reich, all articles mentioned in Section 2 of this decree are hereby confiscated.... They are confiscated for the benefit of the German Reich, and are at the disposal of the Reich Commissioner for the strengthening of Germanism."

The intention to enrich Germany by the seizures rather than to protect the seized objects, is indicated in an undated report by Dr. Hans Posse, director of the Dresden State Picture Gallery:

> "I was able to gain some knowledge on the public and private collections, as well as clerical property, in Kraków and Warsaw. It is true that we cannot hope too much to enrich ourselves from the acquisition of great art works of paintings and sculptures, with the exception of the Veit Stoss altar and the plates of Hans von Kulmbach in the Church of Maria in Kraków... and several other works from the National Museum in Warsaw."[10])

Slave Labor Policy

Article 6 (b) of the Charter provides that the "ill-treatment or deportation to slave labor or for any other purpose, of civilian population of or in occupied territory" shall be a War Crime. The laws relating to forced labor by the inhabitants of occupied territories are found in Article 52 of the Hague Convention, which provides:

> "Requisition in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country."

The policy of the German occupation authorities was in flagrant violation of the terms of this convention. Some idea of this policy may be gathered from the statement made by Hitler in a speech on 9 November 1941:

> "The territory which now works for us contains more than 250,000,000 men, but the territory which works indirectly for us now includes more than 350,000,000. In the measure in which it concerns German territory, the domain which we have taken under our administration, it is not doubtful that we shall succeed in harnessing the very last man to this work."

The actual results achieved were not so complete as this, but the German occupation authorities did succeed in forcing many of the inhabitants of the occupied territories to work for the German war effort, and in deporting at least 5,000,000 persons to Germany to serve German industry and agriculture.

In the early stages of the war, manpower in the occupied territories was under the control of various occupation authorities, and the procedure varied from country to country. In all the occupied territories compulsory labor service was promptly instituted. Inhabitants of the occupied countries were conscripted and compelled to work in local occupations to assist the German war economy. In many cases they were forced to work on German fortifications and military installations. As local supplies of raw materials and local industrial capacity became inadequate to meet the German requirements, the system of deporting laborers to Germany was put into force. By the middle of April 1940 compulsory deportation of laborers to Germany had been ordered in the Government General; and a similar procedure was followed in other eastern territories as they were occupied. A description of this compulsory deportation from Poland was given by Himmler. In an address to SS officers he recalled how in weather 40 degrees below zero they had to "haul away thousands, tens of thousands, hundreds of thousands." On a later occasion Himmler stated:

> "Whether 10,000 Russian females fall down from exhaustion while digging an anti-tank ditch interests me only insofar as the anti-tank ditch for Germany is finished.... We must realize that we have 6 or 7 million foreigners in Germany... They are none of them dangerous so long as we take severe measures at the merest trifles."

During the first 2 years of the German occupation of France, Belgium, Holland, and Norway, however, an attempt was made to obtain the necessary workers on a voluntary basis. How unsuccessful this was may be seen from the report of the meeting of the Central Planning Board on 1 March 1944. The representative of the Defendant Speer, one Kehrl, speaking of the situation in France, said: "During all this time a great number of Frenchmen were recruited, and voluntarily went to Germany."

He was interrupted by the Defendant Sauckel: "Not only voluntarily, some were recruited forcibly."

To which Kehrl replied: "The calling up started after the recruitment no longer yielded enough results."

To which the Defendant Sauckel replied: "Out of the five million workers who arrived in Germany, not even 200,000 came voluntarily."

And Kehrl rejoined: "Let us forget for the moment whether or not some slight pressure was used. Formally, at least, they were volunteers."

Committees were set up to encourage recruiting, and a vigorous propaganda campaign was begun to induce workers to volunteer for service in Germany. This propaganda campaign included, for example, the promise that a prisoner of war would be returned for every laborer who volunteered to go to Germany. In some cases it was supplemented by withdrawing the ration cards of laborers who refused to go to Germany, or by discharging them from their jobs and denying them unemployment benefit or an opportunity to work elsewhere. In some cases workers and their families were threatened with reprisals by the Police if they refused to go to Germany. It was on 21 March 1942 that the Defendant Sauckel was appointed Plenipotentiary General for the Allocation of Labor, with authority over "all available manpower, including that of workers recruited abroad, and of prisoners of war."

The Defendant Sauckel was directly under the Defendant Göring as Delegate of the Four Year Plan, and a Göring decree of 27 March 1942 transferred all his authority over manpower to Sauckel. Sauckel's instructions, too, were that foreign labor should be recruited on a voluntary basis, but also provided that "where, however, in the occupied territories, the appeal for volunteers does not suffice, obligatory service and drafting must under all circumstances be resorted to." Rules requiring labor service in Germany were published in all the occupied territories. The number of laborers to be supplied was fixed by Sauckel, and the local authorities were instructed to meet these requirements by conscription if necessary. That conscription was the rule rather than the exception is shown by the statement of Sauckel, already quoted, on 1 March 1944.

The Defendant Sauckel frequently asserted that the workers belonging to foreign nations were treated humanely, and that the conditions in which they lived were good. But whatever the intention of Sauckel may have been, and however much he may have desired that foreign laborers should be treated humanely, the evidence before the Tribunal establishes the fact that the conscription of labor was accomplished in many cases by drastic and violent methods. The "mistakes and blunders" were on a very great scale. Manhunts took place in the streets, at motion picture houses, even at churches and at night in private houses. Houses were sometimes burnt down, and the families taken as hostages, practices which were described by the Defendant Rosenberg as having their origin "in the blackest periods of the slave trade." The methods used in

obtaining forced labor from the Ukraine appear from an order issued to SD officers which stated:

> "It will not be possible always to refrain from using force.... When searching villages, especially when it has been necessary to burn down a village, the whole population will be put at the disposal of the commissioner by force.... As a rule no more children will be shot.... If we limit harsh measures through the above orders for the time being, it is only done for the following reason.... The most important thing is the recruitment of workers."

The resources and needs of the occupied countries were completely disregarded in carrying out this policy. The treatment of the laborers was governed by Sauckel's instructions of 20 April 1942 to the effect that: "All the men must be fed, sheltered, and treated in such a way as to exploit them to the highest possible extent, at the lowest conceivable degree of expenditure."

The evidence showed that workers destined for the Reich were sent under guard to Germany, often packed in trains without adequate heating, food, clothing, or sanitary facilities. The evidence further showed that the treatment of the laborers in Germany in many cases was brutal and degrading. The evidence relating to the Krupp Works at Essen showed that punishments of the most cruel kind were inflicted on the workers. Theoretically at least the workers were paid, housed, and fed by the DAF, and even permitted to transfer their savings and to send mail and parcels back to their native country; but restrictive regulations took a proportion of the pay; the camps in which they were housed were insanitary; and the food was very often less than the minimum necessary to give the workers strength to do their jobs. In the case of Poles employed on farms in Germany, the employers were given authority to inflict corporal punishment and were ordered, if possible, to house them in stables, not in their own homes. They were subject to constant supervision by the Gestapo and the SS, and if they attempted to leave their jobs they were sent to correction camps or concentration camps. The concentration camps were also used to increase the supply of labor. Concentration camp commanders were ordered to work their prisoners to the limits of their physical power. During the latter stages of the war the concentration camps were so productive in certain types of work that the Gestapo was actually instructed to arrest certain classes of laborers so that they could be used in this way. Allied prisoners of war were also regarded as a possible source of labor. Pressure was exercised on non-commissioned officers to force them to consent to work, by transferring to disciplinary camps those who did not consent. Many of the prisoners of war were assigned to work directly related to military operations, in

violation of Article 31 of the Geneva Convention. They were put to work in munition factories and even made to load bombers, to carry ammunition, and to dig trenches, often under the most hazardous conditions. This condition applied particularly to the Soviet prisoners of war. On 16 February 1943, at a meeting of the Central Planning Board, at which the Defendants Sauckel and Speer were present, Milch said:

> "We have made a request for an order that a certain percentage of men in the Ack-Ack artillery must be Russians; 50,000 will be taken altogether. 30,000 are already employed as gunners. This is an amusing thing, that Russians must work the guns."

And on 4 October 1943, at Posen, Himmler, speaking of the Russian prisoners captured in the early days of the war, said:

> "At that time we did not value the mass of humanity as we value it today, as raw material, as labor. What, after all, thinking in terms of generations, is not to be regretted, but is now deplorable by reason of the loss of labor, is that the prisoners died in tens and hundreds of thousands of exhaustion and hunger."

The general policy underlying the mobilization of slave labor was stated by Sauckel on 20 April 1942. He said:

> "The aim of this new gigantic labor mobilization is to use all the rich and tremendous sources conquered and secured for us by our fighting Armed Forces under the leadership of Adolf Hitler, for the armament of the Armed Forces, and also for the nutrition of the homeland. The raw materials, as well as the fertility of the conquered territories and their human labor power, are to be used completely and conscientiously to the profit of Germany and her allies.... All prisoners of war from the territories of the West, as well as the East, actually in Germany, must be completely incorporated into the German armament and nutrition industries.... Consequently it is an immediate necessity to use the human reserves of the conquered Soviet territory to the fullest extent. Should we not succeed in obtaining the necessary amount of labor on a voluntary basis, we must immediately institute conscription or forced labor.... The complete employment of all prisoners of war, as well as the use of a gigantic number of new foreign civilian workers, men and women, has become an indisputable necessity for the solution of the mobilization of the labor program in this war."

Reference should also be made to the policy which was in existence in Germany by the summer of 1940, under which all aged, insane, and incurable people, "useless eaters," were transferred to

special institutions where they were killed, and their relatives informed that they had died from natural causes. The victims were not confined to German citizens, but included foreign laborers who were no longer able to work, and were therefore useless to the German war machine. It has been estimated that at least some 275,000 people were killed in this manner in nursing homes, hospitals, and asylums, which were under the jurisdiction of the Defendant Frick in his capacity as Minister of the Interior. How many foreign workers were included in this total it has been quite impossible to determine.

Persecution of the Jews

The persecution of the Jews at the hands of the Nazi Government has been proved in the greatest detail before the Tribunal. It is a record of consistent and systematic inhumanity on the greatest scale. Ohlendorf, Chief of Amt III in the RSHA from 1939 to 1943, and who was in command of one of the Einsatzgruppen in the campaign against the Soviet Union, testified as to the methods employed in the extermination of the Jews. He said that he employed firing squads to shoot the victims in order to lessen the sense of individual guilt on the part of his men; and the 90,000 men, women, and children who were murdered in one year by his particular group were mostly Jews.

When the witness Von dem Bach-Zelewski was asked how Ohlendorf could admit the murder of 90,000 people, he replied: "I am of the opinion that when for years, for decades, the doctrine is preached that the Slav race is an inferior race, and Jews not even human, then such an outcome is inevitable."

But the Defendant Frank spoke the final words of this chapter of Nazi history when he testified in this court:

> "We have fought against Jewry, we have fought against it for years; and we have allowed ourselves to make utterances, and my own diary has become a witness against me in this connection—utterances which are terrible.... A thousand years will pass and this guilt of Germany will still not be erased."

The anti-Jewish policy was formulated in Point 4 of the Party Program which declared: "Only a member of the race can be a citizen. A member of the race can only be one who is of German blood, without consideration of creed. Consequently, no Jew can be a member of the race." Other points of the program declared that Jews should be treated as foreigners, that they should not be permitted to hold public office, that they should be expelled from the Reich if it were impossible to nourish the entire population of the state, that they should be denied any further immigration into Germany, and that they should be prohibited from publishing

German newspapers. The Nazi Party preached these doctrines throughout its history. *Der Stürmer* and other publications were allowed to disseminate hatred of the Jews, and in the speeches and public declarations of the Nazi leaders the Jews were held up to public ridicule and contempt.

With the seizure of power, the persecution of the Jews was intensified. A series of discriminatory laws were passed, which limited the offices and professions permitted to Jews; and restrictions were placed on their family life and their rights of citizenship. By the autumn of 1938, the Nazi policy towards the Jews had reached the stage where it was directed towards the complete exclusion of Jews from German life. Pogroms were organized, which included the burning and demolishing of synagogues, the looting of Jewish businesses, and the arrest of prominent Jewish business men. A collective fine of one billion marks was imposed on the Jews, the seizure of Jewish assets was authorized, and the movement of Jews was restricted by regulations to certain specified districts and hours. The creation of ghettos was carried out on an extensive scale, and by an order of the Security Police Jews were compelled to wear a yellow star to be worn on the breast and back.

It was contended for the Prosecution that certain aspects of this anti-Semitic policy were connected with the plans for aggressive war. The violent measures taken against the Jews in November 1938 were nominally in retaliation for the killing of an official of the German Embassy in Paris. But the decision to seize Austria and Czechoslovakia had been made a year before. The imposition of a fine of one billion marks was made, and the confiscation of the financial holdings of the Jews was decreed, at a time when German armament expenditure had put the German treasury in difficulties, and when the reduction of expenditure on armaments was being considered. These steps were taken, moreover, with the approval of the Defendant Göring, who had been given responsibility for economic matters of this kind, and who was the strongest advocate of an extensive rearmament program notwithstanding the financial difficulties.

It was further said that the connection of the anti-Semitic policy with aggressive war was not limited to economic matters. The German Foreign Office circular, in an article of 25 January 1939, entitled "Jewish question as a factor in German foreign policy in the year 1938," described the new phase in the Nazi anti-Semitic policy in these words:

> "It is certainly no coincidence that the fateful year 1938 has brought nearer the solution of the Jewish question simultaneously with the realization of the idea of Greater Germany, since the Jewish policy was both the basis and consequence

of the events of the year 1938. The advance made by Jewish influence and the destructive Jewish spirit in politics, economy, and culture paralyzed the power and the will of the German people to rise again, more perhaps even than the power policy opposition of the former enemy Allied powers of the first World War. The healing of this sickness among the people was therefore certainly one of the most important requirements for exerting the force which, in the year 1938, resulted in the joining together of Greater Germany in defiance of the world."

The Nazi persecution of Jews in Germany before the war, severe and repressive as it was, cannot compare, however, with the policy pursued during the war in the occupied territories. Originally the policy was similar to that which had been in force inside Germany. Jews were required to register, were forced to live in ghettos, to wear the yellow star, and were used as slave laborers. In the summer of 1941, however, plans were made for the "final solution" of the Jewish question in all of Europe. This "final solution" meant the extermination of the Jews, which early in 1939 Hitler had threatened would be one of the consequences of an outbreak of war, and a special section in the Gestapo under Adolf Eichmann, as head of Section B 4 of the Gestapo, was formed to carry out the policy.

The plan for exterminating the Jews was developed shortly after the attack on the Soviet Union. Einsatzgruppen of the Security Police and SD, formed for the purpose of breaking the resistance of the population of the areas lying behind the German armies in the East, were given the duty of exterminating the Jews in those areas. The effectiveness of the work of the Einsatzgruppen is shown by the fact that in February 1942 Heydrich was able to report that Estonia had already been cleared of Jews and that in Riga the number of Jews had been reduced from 29,500 to 2,500. Altogether the Einsatzgruppen operating in the occupied Baltic states killed over 135,000 Jews in 3 months.

Nor did these special units operate completely independently of the German Armed Forces. There is clear evidence that leaders of the Einsatzgruppen obtained the co-operation of army commanders. In one case the relations between an Einsatzgruppe and the military authorities was described at the time as being "very close, almost cordial"; in another case the smoothness of an Einsatzkommando operation was attributed to the "understanding for this procedure" shown by the army authorities.

Units of the Security Police and SD in the occupied territories of the East, which were under civil administration, were given a similar task. The planned and systematic character of the Jewish

persecutions is best illustrated by the original report of SS Brigadier General Stroop, who was in charge of the destruction of the ghetto in Warsaw, which took place in 1943. The Tribunal received in evidence that report, illustrated with photographs, bearing on its title page: "The Jewish ghetto in Warsaw no longer exists." The volume records a series of reports sent by Stroop to the Higher SS and Police Führer East. In April and May of 1943, in one report, Stroop wrote:

> "The resistance put up by the Jews and bandits could only be suppressed by energetic actions of our troops day and night. The Reichsführer SS ordered therefore on 23 April 1943 the cleaning out of the ghetto with utter ruthlessness and merciless tenacity. I therefore decided to destroy and burn down the entire ghetto, without regard to the armament factories. These factories were systematically dismantled and then burnt. Jews usually left their hideouts, but frequently remained in the burning buildings, and jumped out of the windows only when the heat became unbearable. They then tried to crawl with broken bones across the street into buildings which were not afire.... Life in the sewers was not pleasant after the first week. Many times we could hear loud voices in the sewers.... Tear gas bombs were thrown into the manholes, and the Jews driven out of the sewers and captured. Countless numbers of Jews were liquidated in sewers and bunkers through blasting. The longer the resistance continued, the tougher became the members of the Waffen-SS, Police, and Wehrmacht, who always discharged their duties in an exemplary manner."

Stroop recorded that his action at Warsaw eliminated "a proved total of 56,065 people. To that we have to add the number of those killed through blasting, fire, *et cetera,* which cannot be counted." Grim evidence of mass murders of Jews was also presented to the Tribunal in cinematograph films depicting the communal graves of hundreds of victims which were subsequently discovered by the Allies.

These atrocities were all part and parcel of the policy inaugurated in 1941, and it is not surprising that there should be evidence that one or two German officials entered vain protests against the brutal manner in which the killings were carried out. But the methods employed never conformed to a single pattern. The massacres of Rovno and Dubno, of which the German engineer Graebe spoke, were examples of one method, the systematic extermination of Jews in concentration camps was another. Part of the "final solution" was the gathering of Jews from all German-occupied Europe in concentration camps. Their physical condition

was the test of life or death. All who were fit to work were used as slave laborers in the concentration camps; all who were not fit to work were destroyed in gas chambers and their bodies burnt. Certain concentration camps, such as Treblinka and Auschwitz, were set aside for this main purpose. With regard to Auschwitz, the Tribunal heard the evidence of Hoess, the commandant of the camp from 1 May 1940 to 1 December 1943. He estimated that in the camp of Auschwitz alone in that time 2,500,000 persons were exterminated, and that a further 500,000 died from disease and starvation. Hoess described the screening for extermination by stating in evidence:

> "We had two SS doctors on duty at Auschwitz to examine the incoming transports of prisoners. The prisoners would be marched by one of the doctors who would make spot decisions as they walked by. Those who were fit for work were sent into the camp. Others were sent immediately to the extermination plants. Children of tender years were invariably exterminated since by reason of their youth they were unable to work. Still another improvement we made over Treblinka was that at Treblinka the victims almost always knew that they were to be exterminated, and at Auschwitz we endeavored to fool the victims into thinking that they were to go through a delousing process. Of course, frequently they realized our true intentions and we sometimes had riots and difficulties due to that fact. Very frequently, women would hide their children under their clothes, but of course when we found them we would send the children in to be exterminated."

He described the actual killing by stating:

> "It took from three to fifteen minutes to kill the people in the death chamber, depending upon climatic conditions. We knew when the people were dead because their screaming stopped. We usually waited about one-half hour before we opened the doors and removed the bodies. After the bodies were removed our special commandos took off the rings and extracted the gold from the teeth of the corpses."

Beating, starvation, torture, and killing were general. The inmates were subjected to cruel experiments at Dachau in August 1942, victims were immersed in cold water until their body temperature was reduced to 28° centigrade, when they died immediately. Other experiments included high altitude experiments in pressure chambers, experiments to determine how long human beings could survive in freezing water, experiments with poison bullets, experiments with contagious diseases, and experiments

dealing with sterilization of men and women by X-rays and other methods.

Evidence was given of the treatment of the inmates before and after their extermination. There was a testimony that the hair of women victims was cut off before they were killed, and shipped to Germany, there to be used in the manufacture of mattresses. The clothes, money, and valuables of the inmates were also salvaged and sent to the appropriate agencies for disposition. After the extermination the gold teeth and fillings were taken from the heads of the corpses and sent to the Reichsbank.

After the cremation the ashes were used for fertilizer, and in some instances attempts were made to utilize the fat from the bodies of the victims in the commercial manufacture of soap. Special groups traveled through Europe to find Jews and subject them to the "final solution." German missions were sent to such satellite countries as Hungary and Bulgaria to arrange for the shipment of Jews to extermination camps, and it is known that by the end of 1944, 400,000 Jews from Hungary had been murdered at Auschwitz. Evidence has also been given of the evacuation of 110,000 Jews from part of Romania for "liquidation." Adolf Eichmann, who had been put in charge of this program by Hitler, has estimated that the policy pursued resulted in the killing of 6,000,000 Jews, of which 4,000,000 were killed in the extermination institutions.

The Law Relating to War Crimes and Crimes against Humanity

Article 6 of the Charter provides:

> "(b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment, or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
>
> "(c) Crimes against Humanity; namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."

As heretofore stated, the Charter does not define as a separate crime any conspiracy except the one set out in Article 6(a), dealing with Crimes against Peace.

The Tribunal is of course bound by the Charter, in the definition which it gives both of War Crimes and Crimes against Humanity. With respect to War Crimes, however, as has already been pointed out, the crimes defined by Article 6, section (b) of the Charter were already recognized as War Crimes under international law. They were covered by Articles 46, 50, 52, and 56 of the Hague Convention of 1907, and Articles 2, 3, 4, 46, and 51 of the Geneva Convention of 1929. That violations of these provisions constituted crimes for which the guilty individuals were punishable is too well settled to admit of argument.

But it is argued that the Hague Convention does not apply in this case, because of the "general participation" clause in Article 2 of the Hague Convention of 1907. That clause provided:

> "The provisions contained in the regulations (Rules of Land Warfare) referred to in Article I, as well as in the present convention, do not apply except between contracting powers, and then only if all the belligerents are parties to the convention."

Several of the belligerents in the recent war were not parties to this convention.

In the opinion of the Tribunal it is not necessary to decide this question. The rules of land warfare expressed in the convention undoubtedly represented an advance over existing international law at the time of their adoption. But the convention expressly stated that it was an attempt "to revise the general laws and customs of war," which it thus recognized to be then existing, but by 1939 these rules laid down in the convention were recognized by all civilized nations, and were regarded as being declaratory of the laws and customs of war which are referred to in Article 6(b) of the Charter.

A further submission was made that Germany was no longer bound by the rules of land warfare in many of the territories occupied during the war, because Germany had completely subjugated those countries and incorporated them into the German Reich, a fact which gave Germany authority to deal with the occupied countries as though they were part of Germany. In the view of the Tribunal it is unnecessary in this case to decide whether this doctrine of subjugation, dependent as it is upon military conquest, has any application where the subjugation is the result of the crime of aggressive war. The doctrine was never considered to be applicable so long as there was an army in the field attempting to restore the occupied countries to their true owners, and in this case, therefore, the doctrine could not apply to any territories occupied after 1 September 1939. As to the war crimes committed in Bohemia and Moravia, it is a sufficient answer that these territories

were never added to the Reich, but a mere protectorate was established over them.

With regard to crimes against humanity, there is no doubt whatever that political opponents were murdered in Germany before the war, and that many of them were kept in concentration camps in circumstances of great horror and cruelty. The policy of terror was certainly carried out on a vast scale, and in many cases was organized and systematic. The policy of persecution, repression and murder of civilians in Germany before the war of 1939, who were likely to be hostile to the Government, was most ruthlessly carried out. The persecution of Jews during the same period is established beyond all doubt. To constitute crimes against humanity, the acts relied on before the outbreak of war must have been in execution of, or in connection with, any crime within the jurisdiction of the Tribunal. The Tribunal is of the opinion that revolting and horrible as many of these crimes were, it has not been satisfactorily proved that they were done in execution of, or in connection with, any such crime. The Tribunal therefore cannot make a general declaration that the acts before 1939 were Crimes against Humanity within the meaning of the Charter, but from the beginning of the war in 1939 war crimes were committed on a vast scale, which were also crimes against humanity; and insofar as the inhumane acts charged in the Indictment, and committed after the beginning of the war, did not constitute war crimes, they were all committed in execution of, or in connection with, the aggressive war, and therefore constituted crimes against humanity.

THE PRESIDENT: I now ask Colonel Volchkov to continue the reading of the Judgment.

LIEUTENANT COLONEL A. F. VOLCHKOV (Alternate Member of the Tribunal for the U.S.S.R.):

The Accused Organizations

Article 9 of the Charter provides:

> "At the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization.
>
> "After receipt of the Indictment the Tribunal shall give such notices as it thinks fit that the Prosecution intends to ask the Tribunal to make such declaration, and any member of the organization will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of the organization. The Tribunal shall

have power to allow or reject the application. If the application is allowed, the Tribunal may direct in what manner the applicants shall be represented and heard."

Article 10 of the Charter makes clear that the declaration of criminality against an accused organization is final, and cannot be challenged in any subsequent criminal proceedings against member of that organization. Article 10 is as follows:

"In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military, or occupation courts. In any such case the criminal nature of the group or organization is considered proved and shall not be questioned."

The effect of the declaration of criminality by the Tribunal is well illustrated by Law Number 10 of the Control Council of Germany, passed on 20 December, 1945, which provides:

"Each of the following acts is recognized as a crime:

"(d) Membership in categories of a criminal group or organization declared criminal by the International Military Tribunal....

"(3) Any person found guilty of any of the crimes above mentioned may upon conviction be punished as shall be determined by the Tribunal to be just. Such punishment may consist of one or more of the following:

(a) Death.

(b) Imprisonment for life or a term of years, with or without hard labor.

(c) Fine, and imprisonment with or without hard labor, in lieu thereof.

(d) Forfeiture of property.

(e) Restitution of property wrongfully acquired.

(f) Deprivation of some or all civil rights."

In effect, therefore, a member of an organization which the Tribunal has declared to be criminal may be subsequently convicted of the crime of membership and be punished for that crime by death. This is not to assume that international or military courts which will try these individuals will not exercise appropriate standards of justice. This is a far-reaching and novel procedure. Its application, unless properly safeguarded, may produce great injustice.

Article 9, it should be noted, uses the words: "The Tribunal may declare," so that the Tribunal is vested with discretion as to whether it will declare any organization criminal. This discretion

is a judicial one and does not permit arbitrary action, but should be exercised in accordance with well-settled legal principles, one of the most important of which is that criminal guilt is personal, and that mass punishments should be avoided. If satisfied of the criminal guilt of any organization or group, this Tribunal should not hesitate to declare it to be criminal because the theory of "group criminality" is new, or because it might be unjustly applied by some subsequent tribunals. On the other hand, the Tribunal should make such declaration of criminality so far as possible in a manner to insure that innocent persons will not be punished.

A criminal organization is analogous to a criminal conspiracy in that the essence of both is co-operation for criminal purposes. There must be a group bound together and organized for a common purpose. The group must be formed or used in connection with the commission of crimes denounced by the Charter. Since the declaration with respect to the organizations and groups will, as has been pointed out, fix the criminality of its members, that definition should exclude persons who had no knowledge of the criminal purposes or acts of the organization and those who were drafted by the state for membership, unless they were personally implicated in the commission of acts declared criminal by Article 6 of the Charter as members of the organization. Membership alone is not enough to come within the scope of these declarations.

Since declarations of criminality which the Tribunal makes will be used by other courts in the trial of persons on account of their membership in the organizations found to be criminal, the Tribunal feels it appropriate to make the following recommendations:

1. That so far as possible throughout the four zones of occupation in Germany, the classifications, sanctions, and penalties be standardized. Uniformity of treatment so far as practical should be a basic principle. This does not, of course, mean that discretion in sentencing should not be vested in the Court; but the discretion should be within fixed limits appropriate to the nature of the crime.

2. Law Number 10, to which reference has already been made, leaves punishment entirely at the discretion of the trial court, even to the extent of inflicting the death penalty.

The Denazification Law of 5 March 1946, however, passed for Bavaria, Greater Hesse, and Württemberg-Baden, provides definite sentences for punishment in each type of offense. The Tribunal recommends that in no case should punishment to be imposed under Law Number 10 upon any members of an organization or group declared by the Tribunal to be criminal exceed the punishment fixed by the Denazification Law. No person should be punished under both laws.

3. The Tribunal recommends to the Control Council that Law Number 10 be amended to prescribe limitations on the punishment which may be imposed for membership in a criminal group or organization so that such punishment shall not exceed the punishment prescribed by the Denazification Law.

The Indictment asks that the Tribunal declare to be criminal the following organizations: The Leadership Corps of the Nazi Party; the Gestapo; the SD; the SS; the SA; the Reich Cabinet; and the General Staff and High Command of the German Armed Forces.

The Leadership Corps of the Nazi Party

Structure and Component Parts: The Indictment has named the Leadership Corps of the Nazi Party as a group or organization which should be declared criminal. The Leadership Corps of the Nazi Party consisted, in effect, of the official organization of the Nazi Party, with Hitler as Führer at its head. The actual work of running the Leadership Corps was carried out by the Chief of the Party Chancellery (Hess, succeeded by Bormann) assisted by the Party Reich Directorate, or Reichsleitung, which was composed of the Reichsleiter, the heads of the functional organizations of the Party, as well as of the heads of the various main departments and offices which were attached to the Party Reich Directorate. Under the Chief of the Party Chancellery were the Gauleiter, with territorial jurisdiction over the major administrative regions of the Party, the Gaue. The Gauleiter were assisted by a Party Gau Directorate or Gauleitung, similar in composition and in function to the Party Reich Directorate. Under the Gauleiter in the Party hierarchy were the Kreisleiter with territorial jurisdiction over a Kreis, usually consisting of a single county, and assisted by a Party Kreis Directorate, or Kreisleitung. The Kreisleiter were the lowest members of the Party hierarchy who were full-time paid employees. Directly under the Kreisleiter were the Ortsgruppenleiter, then the Zellenleiter and then the Blockleiter. Directives and instructions were received from the Party Reich Directorate. The Gauleiter had the function of interpreting such orders and issuing them to lower formations. The Kreisleiter had a certain discretion in interpreting orders, but the Ortsgruppenleiter had not, but acted under definite instructions. Instructions were only issued in writing down as far as the Ortsgruppenleiter. The Block- and Zellenleiter usually received instructions orally. Membership in the Leadership Corps at all levels was voluntary.

On 28 February 1946, the Prosecution excluded from the declaration asked for, all members of the staffs of the Ortsgruppenleiter and all assistants of the Zellenleiter and Blockleiter. The declaration sought against the Leadership Corps of the Nazi Party thus includes

the Führer, the Reichsleitung, the Gauleiter and their staff officers, the Kreisleiter and their staff officers, the Ortsgruppenleiter, the Zellenleiter, and the Blockleiter, a group estimated to contain at least 600,000 people.

Aims and Activities: The primary purpose of the Leadership Corps from its beginning was to assist the Nazis in obtaining and, after 30 January 1933, in retaining, control of the German State. The machinery of the Leadership Corps was used for the widespread dissemination of Nazi propaganda and to keep a detailed check on the political attitudes of the German people. In this activity the lower Political Leaders played a particularly important role. The Blockleiter were instructed by the Party Manual to report to the Ortsgruppenleiter all persons circulating damaging rumors or criticism of the regime. The Ortsgruppenleiter, on the basis of information supplied them by the Blockleiter and Zellenleiter, kept a card index of the people within their Ortsgruppe which recorded the factors which would be used in forming a judgment as to their political reliability. The Leadership Corps was particularly active during plebiscites. All members of the Leadership Corps were active in getting out the vote and insuring the highest possible proportion of "yes" votes. Ortsgruppenleiter and Political Leaders of higher ranks often collaborated with the Gestapo and SD in taking steps to determine those who refused to vote or who voted "no," and in taking steps against them which went as far as arrest and detention in a concentration camp.

Criminal Activity: These steps, which relate merely to the consolidation of control of the Nazi Party, are not criminal under the view of the conspiracy to wage aggressive war which has previously been set forth. But the Leadership Corps was also used for similar steps in Austria and those parts of Czechoslovakia, Lithuania, Poland, France, Belgium, Luxembourg, and Yugoslavia which were incorporated into the Reich and within the Gaue of the Nazi Party. In those territories the machinery of the Leadership Corps was used for their Germanization through the elimination of local customs and the detection and arrest of persons who opposed German occupation. This was criminal under Article 6 (b) of the Charter in those areas governed by the Hague Rules of Land Warfare, and criminal under Article 6 (c) of the Charter as to the remainder.

The Leadership Corps played its part in the persecution of the Jews. It was involved in the economic and political discrimination against the Jews, which was put into effect shortly after the Nazis came into power. The Gestapo and SD were instructed to co-ordinate with the Gauleiter and Kreisleiter the measures taken in the pogroms of November 9 and 10 in the year 1938. The Leadership Corps was also used to prevent German public opinion from reacting against the

measures taken against the Jews in the East. On 9 October 1942, a confidential information bulletin was sent to all Gauleiter and Kreisleiter entitled "Preparatory Measures for the Final Solution of the Jewish Question in Europe. Rumors Concerning the Conditions of the Jews in the East." This bulletin stated that rumors were being started by returning soldiers concerning the conditions of Jews in the East which some Germans might not understand, and outlined in detail the official explanation to be given. This bulletin contained no explicit statement that the Jews were being exterminated, but it did indicate they were going to labor camps, and spoke of their complete segregation and elimination and the necessity of ruthless severity. Thus, even at its face value, it indicated the utilization of the machinery of the Leadership Corps to keep German public opinion from rebelling at a program which was stated to involve condemning the Jews of Europe to a lifetime of slavery. This information continued to be available to the Leadership Corps. The August 1944 edition of *Die Lage*, a publication which was circulated among the Political Leaders, described the deportation of 430,000 Jews from Hungary.

The Leadership Corps played an important part in the administration of the Slave Labor Program. A Sauckel decree, dated 6 April 1942, appointed the Gauleiter as Plenipotentiaries for Labor Mobilization for their Gaue with authority to co-ordinate all agencies dealing with labor questions in their Gaue, with specific authority over the employment of foreign workers, including their conditions of work, feeding, and housing. Under this authority the Gauleiter assumed control over the allocation of labor in their Gaue, including the forced laborers from foreign countries. In carrying out this task the Gauleiter used many Party offices within their Gaue, including subordinate Political Leaders. For example, Sauckel's decree of 8 September 1942, relating to the allocation for household labor of 400,000 women laborers brought in from the East, established a procedure under which applications filed for such workers should be passed on by the Kreisleiter, whose judgment was final.

Under Sauckel's directive the Leadership Corps was directly concerned with the treatment given foreign workers, and the Gauleiter were specifically instructed to prevent "politically inept factory heads" from giving "too much consideration to the care of Eastern Workers." The type of question which was considered in their treatment included reports by the Kreisleiter on pregnancies among the female slave laborers, which would result in an abortion if the child's parentage would not meet the racial standards laid down by the SS, and usually detention in a concentration camp for the female slave laborer. The evidence has established that under the supervision of the Leadership Corps, the industrial workers were housed in camps under atrocious sanitary conditions, worked long hours,

and were inadequately fed. Under similar supervision, the agricultural workers, who were somewhat better treated, were prohibited transportation, entertainment, and religious worship, and were worked without any time limit on their working hours and under regulations which gave the employer the right to inflict corporal punishment. The Political Leaders, at least down to the Ortsgruppenleiter, were responsible for this supervision. On 5 May 1943, a memorandum of Bormann, instructing that mistreatment of slave laborers cease, was distributed down to the Ortsgruppenleiter. Similarly on 10 November 1944, a Speer circular transmitted a Himmler directive which provided that all members of the Nazi Party, in accordance with instructions from the Kreisleiter, would be warned by the Ortsgruppenleiter of their duty to keep foreign workers under careful observation.

The Leadership Corps was directly concerned with the treatment of prisoners of war. On 5 November 1941, Bormann transmitted a directive down to the level of Kreisleiter instructing them to insure compliance by the Army with the recent directives of the Department of the Interior ordering that dead Russian prisoners of war should be buried wrapped in tar paper in a remote place without any ceremony or any decorations of their graves. On 25 November 1943, Bormann sent a circular instructing the Gauleiter to report any lenient treatment of prisoners of war. On 13 September 1944, Bormann sent a directive down to the level of Kreisleiter ordering that liaison be established between the Kreisleiter and the guards of the prisoners of war in order "better to assimilate the commitment of the prisoners of war to the political and economic demands." On 17 October 1944, an OKW directive instructed the officer in charge of the prisoners of war to confer with the Kreisleiter on questions of the productivity of labor. The use of prisoners of war, particularly those from the East, was accompanied by a widespread violation of the rules of land warfare. This evidence establishes that the Leadership Corps down to the level of Kreisleiter was a participant in this illegal treatment.

The machinery of the Leadership Corps was also utilized in attempts made to deprive Allied airmen of the protection to which they were entitled under the Geneva Convention. On 13 March 1940, a directive of Hess transmitted instructions through the Leadership Corps down to the Blockleiter for the guidance of the civilian population in case of the landing of enemy planes or parachutists, which stated that enemy parachutists were to be immediately arrested or "made harmless." On 30 May 1944, Bormann sent a circular letter to all Gau- and Kreisleiter reporting instances of lynchings of Allied low-level fliers in which no police action was taken. It was requested that Ortsgruppenleiter be informed orally of the contents of this letter. This letter accompanied a propaganda

drive which had been instituted by Goebbels to induce such lynchings, and clearly amounted to instructions to induce such lynchings or at least to violate the Geneva Convention by withdrawing any police protection. Some lynchings were carried out pursuant to this program, but it does not appear that they were carried out throughout all of Germany. Nevertheless, the existence of this circular letter shows that the heads of the Leadership Corps were utilizing it for a purpose which was patently illegal and which involved the use of the machinery of the Leadership Corps at least through the Ortsgruppenleiter.

Conclusion

The Leadership Corps was used for purposes which were criminal under the Charter and involved the Germanization of incorporated territory, the persecution of the Jews, the administration of the slave labor program, and the mistreatment of prisoners of war. The Defendants Bormann and Sauckel, who were members of this organization, were among those who used it for these purposes. The Gauleiter, the Kreisleiter, and the Ortsgruppenleiter participated, to one degree or another, in these criminal programs. The Reichsleitung as the staff organization of the Party is also responsible for these criminal programs as well as the heads of the various staff organizations of the Gauleiter and Kreisleiter. The decision of the Tribunal on these staff organizations includes only the Amtsleiter who were heads of offices on the staffs of the Reichsleitung, Gauleitung, and Kreisleitung. With respect to other staff officers and party organizations attached to the Leadership Corps other than the Amtsleiter referred to above, the Tribunal will follow the suggestion of the Prosecution in excluding them from the declaration.

The Tribunal declares to be criminal within the meaning of the Charter the group composed of those members of the Leadership Corps holding the positions enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes. The basis of this finding is the participation of the organization in war crimes and crimes against humanity connected with the war; the group declared criminal cannot include, therefore, persons who had ceased to hold the positions enumerated in the preceding paragraph prior to 1 September 1939.

Gestapo and SD

Structure and Component Parts: The Prosecution has named Die Geheime Staatspolizei (Gestapo) and Der Sicherheitsdienst des Reichsführer SS (SD) as groups or organizations which should be

declared criminal. The Prosecution presented the cases against the Gestapo and SD together, stating that this was necessary because of the close working relationship between them. The Tribunal permitted the SD to present its defense separately because of a claim of conflicting interests, but after examining the evidence has decided to consider the case of the Gestapo and SD together.

The Gestapo and the SD were first linked together on 26 June 1936, by the appointment of Heydrich, who was the Chief of the SD, to the position of Chief of the Security Police, which was defined to include both the Gestapo and the Criminal Police. Prior to that time the SD had been the intelligence agency, first of the SS, and, after 4 June 1934, of the entire Nazi Party. The Gestapo had been composed of the various political police forces of the several German federal states, which had been unified under the personal leadership of Himmler, with the assistance of Göring. Himmler had been appointed Chief of the German Police in the Ministry of the Interior on 17 June 1936, and in his capacity as Reichsführer SS and Chief of the German Police issued his decree of 26 June 1936, which placed both the Criminal Police, or Kripo, and the Gestapo in the Security Police, and placed both the Security Police and the SD under the command of Heydrich.

This consolidation under the leadership of Heydrich of the Security Police, a State organization, and the SD, a Party organization, was formalized by the decree of 27 September 1939, which united the various State and Party offices which were under Heydrich as Chief of the Security Police and SD into one administrative unit, the Reich Security Main Office (RSHA), which was at the same time both one of the principal offices (Hauptämter) of the SS under Himmler as Reichsführer SS, and an office in the Ministry of the Interior under Himmler as Chief of the German Police. The internal structure of the RSHA shows the manner in which it consolidated the offices of the Security Police with those of the SD. The RSHA was divided into seven offices (Ämter), two of which (Amt I and Amt II) dealt with administrative matters. The Security Police were represented by Amt IV, the head office of the Gestapo, and by Amt V, the head office of the Criminal Police. The SD were represented by Amt III, the head office for SD activities inside Germany, by Amt VI, the head office for SD activities outside of Germany, and by Amt VII, the office for ideological research. Shortly after the creation of the RSHA, in November 1939, the Security Police was "co-ordinated" with the SS by taking all officials of the Gestapo and Criminal Police into the SS at ranks equivalent to their positions.

The creation of the RSHA represented the formalization, at the top level, of the relationship under which the SD served as the intelligence agency for the Security Police. A similar co-ordination existed in the local offices. Within Germany and areas which were

incorporated within the Reich for the purpose of civil administration, local offices of the Gestapo, Criminal Police, and SD were formally separate. They were subject to co-ordination by inspectors of the Security Police and SD on the staffs of the local Higher SS and Police Leaders, however, and one of the principal functions of the local SD units was to serve as the intelligence agency for the local Gestapo units. In the occupied territories the formal relationship between local units of the Gestapo, Criminal Police, and SD was slightly closer. They were organized into local units of the Security Police and SD and were under the control of both the RSHA and of the Higher SS and Police Leader who was appointed by Himmler to serve on the staff of the occupying authority. The offices of the Security Police and SD in occupied territory were composed of departments corresponding to the various offices of the RSHA. In occupied territories which were still considered to be operational military areas or where German control had not been formally established, the organization of the Security Police and SD was only slightly changed. Members of the Gestapo, Kripo, and SD were joined together into military-type organizations known as Einsatzkommandos and Einsatzgruppen in which the key positions were held by members of the Gestapo, Kripo, and SD and in which members of the Order Police, the Waffen-SS, and even the Wehrmacht were used as auxiliaries. These organizations were under the overall control of the RSHA, but in front-line areas were under the operational control of the appropriate army commander.

It can thus be seen that from a functional point of view both the Gestapo and the SD were important and closely related groups within the organization of the Security Police and the SD. The Security Police and SD was under a single command, that of Heydrich and later Kaltenbrunner, as Chief of the Security Police and SD; it had a single headquarters, the RSHA; it had its own command channels and worked as one organization both in Germany, in occupied territories, and in the areas immediately behind the front lines. During the period with which the Tribunal is primarily concerned, applicants for positions in the Security Police and SD received training in all its components, the Gestapo, Criminal Police, and SD. Some confusion has been caused by the fact that part of the organization was technically a formation of the Nazi Party while another part of the organization was an office in the Government, but this is of no particular significance in view of the law of 1 December 1933, declaring the unity of the Nazi Party and the German State.

The Security Police and SD was a voluntary organization. It is true that many civil servants and administrative officials were transferred into the Security Police. The claim that this transfer was compulsory amounts to nothing more than the claim that they

had to accept the transfer or resign their positions, with a possibility of having incurred official disfavor. During the war a member of the Security Police and SD did not have a free choice of assignments within that organization and the refusal to accept a particular position, especially when serving in occupied territory, might have led to serious punishment. The fact remains, however, that all members of the Security Police and SD joined the organization voluntarily under no other sanction than the desire to retain their positions as officials.

The organization of the Security Police and SD also included three special units which must be dealt with separately. The first of these was the Frontier Police, or Grenzpolizei, which came under the control of the Gestapo in 1937. Their duties consisted in the control of passage over the borders of Germany. They arrested persons who crossed the borders illegally. It is also clear from the evidence presented that they received directives from the Gestapo to transfer foreign workers whom they apprehended to concentration camps. They could also request the local office of the Gestapo for permission to commit persons arrested to concentration camps. The Tribunal is of the opinion that the Frontier Police must be included in the charge of criminality against the Gestapo.

The Border and Customs Protection or Zollgrenzschutz became part of the Gestapo in the summer of 1944. The functions of this organization were similar to the Frontier Police in enforcing border regulations with particular respect to the prevention of smuggling. It does not appear, however, that their transfer was complete, but that about half of their personnel of 54,000 remained under the Reich Finance Administration or the Order Police. A few days before the end of the war the whole organization was transferred back to the Reich Finance Administration. The transfer of the organization to the Gestapo was so late and it participated so little in the overall activities of the organization that the Tribunal does not feel that it should be dealt with in considering the criminality of the Gestapo.

The third organization was the so-called Secret Field Police which was originally under the Army but which in 1942 was transferred by military order to the Security Police. The Secret Field Police was concerned with security matters within the Army in occupied territory, and also with the prevention of attacks by civilians on military installations or units, and committed war crimes and crimes against humanity on a wide scale. It has not been proved, however, that it was a part of the Gestapo and the Tribunal does not consider it as coming within the charge of criminality contained in the Indictment, except such members as may have been transferred to Amt IV of the RSHA or were members of organizations declared criminal by this Judgment.

Criminal Activity: Originally, one of the primary functions of the Gestapo was the prevention of any political opposition to the Nazi regime, a function which it performed with the assistance of the SD. The principal weapon used in performing this function was the concentration camp. The Gestapo did not have administrative control over the concentration camps, but, acting through the RSHA, was responsible for the detention of political prisoners in those camps. Gestapo officials were usually responsible for the interrogation of political prisoners at the camps.

The Gestapo and the SD also dealt with charges of treason and with questions relating to the press, the Churches, and the Jews. As the Nazi program of anti-Semitic persecution increased in intensity the role played by these groups became increasingly important. In the early morning of 10 November 1938, Heydrich sent a telegram to all offices of the Gestapo and SD, giving instructions for the organization of the pogroms of that date and instructing them to arrest as many Jews as the prisons could hold, "especially rich ones," but to be careful that those arrested were healthy and not too old. By 11 November 1938, 20,000 Jews had been arrested and many were sent to concentration camps. On 24 January 1939, Heydrich, the Chief of the Security Police and SD, was charged with furthering the emigration and evacuation of Jews from Germany, and on 31 July 1941, with bringing about a complete solution of the Jewish problem in German-dominated Europe. A special section of the Gestapo office of the RSHA under Standartenführer Eichmann was set up with responsibility for Jewish matters, which employed its own agents to investigate the Jewish problem in occupied territory. Local offices of the Gestapo were used first to supervise the emigration of Jews and later to deport them to the East both from Germany and from the territories occupied during the war. Einsatzgruppen of the Security Police and SD operating behind the lines of the Eastern Front engaged in the wholesale massacre of Jews. A special detachment from Gestapo headquarters in the RSHA was used to arrange for the deportation of Jews from Axis satellites to Germany for the "final solution."

Local offices of the Security Police and SD played an important role in the German administration of occupied territories. The nature of their participation is shown by measures taken in the summer of 1938 in preparation for the attack on Czechoslovakia which was then in contemplation. Einsatzgruppen of the Gestapo and SD were organized to follow the Army into Czechoslovakia to provide for the security of political life in the occupied territories. Plans were made for the infiltration of SD men into the area in advance, and for the building up of a system of files to indicate what inhabitants should be placed under surveillance, deprived of passports or liquidated. These plans were considerably altered due to

the cancellation of the attack on Czechoslovakia, but in the military operations which actually occurred, particularly in the war against the U.S.S.R., Einsatzgruppen of the Security Police and SD went into operation and combined brutal measures for the pacification of the civilian population with the wholesale slaughter of Jews. Heydrich gave orders to fabricate incidents on the Polish-German frontier in 1939, which would give Hitler sufficient provocation to attack Poland. Both Gestapo and SD personnel were involved in these operations.

The local units of the Security Police and SD continued their work in the occupied territories after they had ceased to be an area of operations. The Security Police and SD engaged in widespread arrests of the civilian population of these occupied countries, imprisoned many of them under inhumane conditions, subjected them to brutal third-degree methods, and sent many of them to concentration camps. Local units of the Security Police and SD were also involved in the shooting of hostages, the imprisonment of relatives, the execution of persons charged as terrorists and saboteurs without a trial, and the enforcement of the "Nacht und Nebel" decree under which persons charged with a type of offense believed to endanger the security of the occupying forces were either executed within a week or secretly removed to Germany without being permitted to communicate with their family and friends.

Offices of the Security Police and SD were involved in the administration of the slave labor program. In some occupied territories they helped local labor authorities to meet the quotas imposed by Sauckel. Gestapo offices inside of Germany were given surveillance over slave laborers and responsibility for apprehending those who were absent from their place of work. The Gestapo also had charge of the so-called work training camps. Although both German and foreign workers could be committed to these camps, they played a significant role in forcing foreign laborers to work for the German war effort. In the latter stages of the war, as the SS embarked on a slave labor program of its own, the Gestapo was used to arrest workers for the purpose of insuring an adequate supply in the concentration camps.

The local offices of the Security Police and SD were also involved in the commission of war crimes involving the mistreatment and murder of prisoners of war. Soviet prisoners of war in prisoner-of-war camps in Germany were screened by Einsatzkommandos acting under the directions of the local Gestapo offices. Commissars, Jews, members of the intelligentsia, "fanatical Communists," and even those who were considered incurably sick, were classified as "intolerable," and exterminated. The local offices of the Security Police and SD were involved in the enforcement of the "Bullet" decree, put into effect on 4 March 1944, under which certain

categories of prisoners of war who were recaptured were not treated as prisoners of war, but taken to Mauthausen in secret and shot. Members of the Security Police and the SD were charged with the enforcement of the decree for the shooting of parachutists and Commandos.

Conclusion

The Gestapo and SD were used for purposes which were criminal under the Charter, involving the persecution and extermination of the Jews, brutalities and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave labor program and the mistreatment and murder of prisoners of war. The Defendant Kaltenbrunner, who was a member of this organization, was among those who used it for these purposes. In dealing with the Gestapo the Tribunal includes all executive and administrative officials of Amt IV of the RSHA, or concerned with Gestapo administration in other departments of the RSHA, and all local Gestapo officials serving both inside and outside of Germany, including the members of the Frontier Police, but not including the members of the Border and Customs Protection or the Secret Field Police, except such members as have been specified above. At the suggestion of the Prosecution the Tribunal does not include persons employed by the Gestapo for purely clerical, stenographic, janitorial, or similar unofficial routine tasks. In dealing with the SD the Tribunal includes Ämter III, VI, and VII of the RSHA and all other members of the SD, including all local representatives and agents, honorary or otherwise, whether they were technically members of the SS or not.

The Tribunal declares to be criminal within the meaning of the Charter the group composed of those members of the Gestapo and SD holding the positions enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes. The basis for this finding is the participation of the organization in war crimes and crimes against humanity connected with the war; this group declared criminal cannot include, therefore, persons who had ceased to hold the positions enumerated in the preceding paragraph prior to 1 September 1939.

THE PRESIDENT: The Tribunal will adjourn for 10 minutes.

[A recess was taken.]

THE PRESIDENT: Owing to a mistake in the text, there are two corrections which I desire to make on behalf of the Tribunal.

The first occurs on Page 149 in the sentence which reads as follows: "The Tribunal declares to be criminal within the meaning of the Charter the group composed of those members of the Leadership Corps holding the positions enumerated in the preceding paragraph"—and then the word "or" should be omitted and the sentence should continue "who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter." That was the first mistake.

The second mistake was on Page 158, in the sentence at the bottom of the page, which reads as follows: "In dealing with the SD the Tribunal includes Ämter III, VI and VII of the RSHA." The translation came through "Ämter III, IV and V." It should have been Ämter III, VI and VII.

Now I will continue the reading of the Judgment.

SS

Structure and Component Parts: The Prosecution has named Die Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the SS) as an organization which should be declared criminal. The portion of the Indictment dealing with the SS also includes the Sicherheitsdienst des Reichsführer SS (commonly known as the SD). This latter organization, which was originally an intelligence branch of the SS, later became an important part of the organization of the Security Police and SD and is dealt with in the Tribunal's judgment on the Gestapo.

The SS was originally established by Hitler in 1925 as an élite section of the SA for political purposes under the pretext of protecting speakers at public meetings of the Nazi Party. After the Nazis had obtained power the SS was used to maintain order and control audiences at mass demonstrations and was given the additional duty of "internal security" by a decree of the Führer. The SS played an important role at the time of the Röhm purge of 30 June 1934, and, as a reward for its services, was made an independent unit of the Nazi Party shortly thereafter.

In 1929, when Himmler was first appointed as Reichsführer, the SS consisted of 280 men who were regarded as especially trustworthy. In 1933 it was composed of 52,000 men drawn from all walks of life. The original formation of the SS was the Allgemeine SS, which by 1939 had grown to a corps of 240,000 men, organized on military lines into divisions and regiments. During the war its strength declined to well under 40,000.

The SS originally contained two other formations, the SS Verfügungstruppe, a force consisting of SS members who volunteered for four years' armed service in lieu of compulsory service with

the Army, and the SS Totenkopfverbände, special troops employed to guard concentration camps, which came under the control of the SS in 1934. The SS Verfügungstruppe was organized as an armed unit to be employed with the Army in the event of mobilization. In the summer of 1939, the Verfügungstruppe was equipped as a motorized division to form the nucleus of the forces which came to be known in 1940 as the Waffen-SS. In that year the Waffen-SS comprised 100,000 men, 56,000 coming from the Verfügungstruppe and the rest from the Allgemeine SS and the Totenkopfverbände. At the end of the war it is estimated to have consisted of about 580,000 men and 40 divisions. The Waffen-SS was under the tactical command of the Army, but was equipped and supplied through the administrative branches of the SS and under SS disciplinary control.

The SS central organization had 12 main offices. The most important of these were the RSHA, which has already been discussed, the WVHA or Economic Administration Main Office, which administered concentration camps along with its other duties, a Race and Settlement Office together with auxiliary offices for repatriation of racial Germans (Volksdeutsche Mittelstelle). The SS central organization also had a legal office and the SS possessed its own legal system; and its personnel were under the jurisdiction of special courts. Also attached to the SS main offices was a research foundation known as the Experiments Ahnenerbe. The scientists attached to this organization are stated to have been mainly honorary members of the SS. During the war an institute for military scientific research became attached to the Ahnenerbe which conducted extensive experiments involving the use of living human beings. An employee of this institute was a certain Dr. Rascher, who conducted these experiments with the full knowledge of the Ahnenerbe, which were subsidized and under the patronage of the Reichsführer SS who was a trustee of the foundation.

Beginning in 1933 there was a gradual but thorough amalgamation of the Police and SS. In 1936 Himmler, the Reichsführer SS, became Chief of the German Police with authority over the regular uniformed Police as well as the Security Police. Himmler established a system under which Higher SS and Police Leaders, appointed for each Wehrkreis, served as his personal representatives in co-ordinating the activities of the Order Police, Security Police and SD, and Allgemeine SS within their jurisdictions. In 1939 the SS and police systems were co-ordinated by taking into the SS all officials of the Security and Order Police, at SS ranks equivalent to their rank in the Police.

Until 1940 the SS was an entirely voluntary organization. After the formation of the Waffen-SS in 1940 there was a gradually increasing number of conscripts into the Waffen-SS. It appears that

about a third of the total number of people joining the Waffen-SS were conscripts, that the proportion of conscripts was higher at the end of the war than at the beginning, but that there continued to be a high proportion of volunteers until the end of the war.

Criminal Activities: SS units were active participants in the steps leading up to aggressive war. The Verfügungstruppe was used in the occupation of the Sudetenland, of Bohemia and Moravia, and of Memel. The Henlein Free Corps was under the jurisdiction of the Reichsführer SS for operations in the Sudetenland in 1938, and the Volksdeutsche Mittelstelle financed fifth-column activities there.

The SS was even a more general participant in the commission of war crimes and crimes against humanity. Through its control over the organization of the Police, particularly the Security Police and SD, the SS was involved in all the crimes which have been outlined in the section of this Judgment dealing with the Gestapo and SD. Other branches of the SS were equally involved in these criminal programs. There is evidence that the shooting of unarmed prisoners of war was the general practice in some Waffen-SS divisions. On 1 October 1944, the custody of prisoners of war and interned persons was transferred to Himmler, who in turn transferred prisoner-of-war affairs to SS Obergruppenführer Berger and to SS Obergruppenführer Pohl. The Race and Settlement Office of the SS, together with the Volksdeutsche Mittelstelle, were active in carrying out schemes for Germanization of occupied territories according to the racial principles of the Nazi Party and were involved in the deportation of Jews and other foreign nationals. Units of the Waffen-SS and Einsatzgruppen operating directly under the SS Main Office were used to carry out these plans. These units were also involved in the widespread murder and ill-treatment of the civilian population of occupied territories. Under the guise of combating partisan units, units of the SS exterminated Jews and people deemed politically undesirable by the SS, and their reports record the execution of enormous numbers of persons. Waffen-SS divisions were responsible for many massacres and atrocities in occupied territories such as the massacres at Oradour and Lidice.

From 1934 onwards the SS was responsible for the guarding and administration of concentration camps. The evidence leaves no doubt that the consistently brutal treatment of the inmates of concentration camps was carried out as a result of the general policy of the SS, which was that the inmates were racial inferiors to be treated only with contempt. There is evidence that where manpower considerations permitted, Himmler wanted to rotate guard battalions so that all members of the SS would be instructed as to the proper attitude to take to inferior races. After 1942, when the

concentration camps were placed under the control of the WVHA, they were used as a source of slave labor. An agreement made with the Ministry of Justice on 18 September 1942 provided that anti-social elements who had finished prison sentences were to be delivered to the SS to be worked to death. Steps were continually taken, involving the use of the Security Police and SD and even the Waffen-SS, to insure that the SS had an adequate supply of concentration camp labor for its projects. In connection with the administration of the concentration camps, the SS embarked on a series of experiments on human beings which were performed on prisoners of war or concentration camp inmates. These experiments included freezing to death and killing by poison bullets. The SS was able to obtain an allocation of Government funds for this kind of research on the grounds that they had access to human material not available to other agencies.

The SS played a particularly significant role in the persecution of the Jews. The SS was directly involved in the demonstrations of 10 November, 1938. The evacuation of the Jews from occupied territories was carried out under the directions of the SS with the assistance of SS Police units. The extermination of the Jews was carried out under the direction of the SS central organizations. It was actually put into effect by SS formations. The Einsatzgruppen engaged in wholesale massacres of the Jews. SS Police units were also involved. For example, the massacre of Jews in the Warsaw ghetto was carried out under the directions of SS Brigadeführer and Major General of the Police Stroop. A special group from the SS central organization arranged for the deportation of Jews from various Axis satellites, and their extermination was carried out in the concentration camps run by the WVHA.

It is impossible to single out any one portion of the SS which was not involved in these criminal activities. The Allgemeine SS was an active participant in the persecution of the Jews and was used as a source of concentration camp guards. Units of the Waffen-SS were directly involved in the killing of prisoners of war and the atrocities in occupied countries. It supplied personnel for the Einsatzgruppen, and had command over the concentration camp guards after its absorption of the Totenkopf SS, which originally controlled the system. Various SS Police units were also widely used in the atrocities in occupied countries and the extermination of the Jews there. The SS central organization supervised the activities of these various formations and was responsible for such special projects as the human experiments and "final solution" of the Jewish question.

The Tribunal finds that knowledge of these criminal activities was sufficiently general to justify declaring that the SS was a

criminal organization to the extent hereinafter described. It does appear that an attempt was made to keep secret some phases of its activities, but its criminal programs were so widespread, and involved slaughter on such a gigantic scale, that its criminal activities must have been widely known. It must be recognized, moreover, that the criminal activities of the SS followed quite logically from the principles on which it was organized. Every effort had been made to make the SS a highly disciplined organization composed of the élite of National Socialism. Himmler had stated that there were people in Germany "who become sick when they see these black coats" and that he did not expect that "they should be loved by too many." Himmler also indicated his view that the SS was concerned with perpetuating the élite racial stock with the object of making Europe a Germanic continent, and the SS was instructed that it was designed to assist the Nazi Government in the ultimate domination of Europe and the elimination of all inferior races. This mystic and fanatical belief in the superiority of the Nordic German developed into the studied contempt and even hatred of other races which led to criminal activities of the type outlined above being considered as a matter of course if not a matter of pride. The actions of a soldier in the Waffen-SS who in September 1939, acting entirely on his own initiative, killed 50 Jewish laborers whom he had been guarding, were described by the statement that as an SS man, he was "particularly sensitive to the sight of Jews," and had acted "quite thoughtlessly in a youthful spirit of adventure," and a sentence of 3 years imprisonment imposed on him was dropped under an amnesty. Hess wrote with truth that the Waffen-SS were more suitable for the specific tasks to be solved in occupied territory owing to their extensive training in questions of race and nationality. Himmler, in a series of speeches made in 1943, indicated his pride in the ability of the SS to carry out these criminal acts. He encouraged his men to be "tough and ruthless," he spoke of shooting "thousands of leading Poles," and thanked them for their co-operation and lack of squeamishness at the sight of hundreds and thousands of corpses of their victims. He extolled ruthlessness in exterminating the Jewish race and later described this process as "delousing." These speeches show that the general attitude prevailing in the SS was consistent with these criminal acts.

Conclusion

The SS was utilized for purposes which were criminal under the Charter involving the persecution and extermination of the Jews, brutalities and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave labor program, and the mistreatment and murder of prisoners

of war. The Defendant Kaltenbrunner was a member of the SS implicated in these activities. In dealing with the SS the Tribunal includes all persons who had been officially accepted as members of the SS, including, the members of the Allgemeine SS, members of the Waffen-SS, members of the SS Totenkopfverbände, and the members of any of the different police forces who were members of the SS. The Tribunal does not include the so-called SS riding units. The Sicherheitsdienst des Reichsführer SS (commonly known as the SD) is dealt with in the Tribunal's judgment on the Gestapo and SD.

The Tribunal declares to be criminal within the meaning of the Charter the group composed of those persons who had been officially accepted as members of the SS as enumerated in the preceding paragraph, who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes, excluding, however, those who were drafted into membership by the State in such a way as to give them no choice in the matter, and who had committed no such crimes. The basis of this finding is the participation of the organization in war crimes and crimes against humanity connected with the war; this group declared criminal cannot include, therefore, persons who had ceased to belong to the organizations enumerated in the preceding paragraph prior to 1 September 1939.

SA

Structure and Component Parts: The Prosecution has named die Sturmabteilungen der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the SA) as an organization which should be declared criminal. The SA was founded in 1921 for political purposes. It was organized on military lines. Its members wore their own uniforms and had their own discipline and regulations. After the Nazis had obtained power the SA greatly increased in membership due to the incorporation within it of certain veterans' organizations. In April 1933, the Stahlhelm, an organization of one and a half million members, was transferred into the SA, with the exception of its members over 45 years of age and some others, pursuant to an agreement between their leader Seldte and Hitler. Another veterans' organization, the so-called Kyffhäuserbund, was transferred in the same manner, together with a number of rural riding organizations.

Until 1933, there is no question but that membership in the SA was voluntary. After 1933 civil servants were under certain political and economic pressure to join the SA. Members of the Stahlhelm,

the Kyffhäuserbund and the rural riding associations were transferred into the SA without their knowledge, but the Tribunal is not satisfied that the members in general endeavored to protest against this transfer or that there was any evidence, except in isolated cases, of the consequences of refusal. The Tribunal therefore finds that membership in the SA was generally voluntary.

By the end of 1933 the SA was composed of 4½ million men. As a result of changes made after 1934, in 1939 the SA numbered 1½ million men.

Activities: In the early days of the Nazi movement the storm troopers of the SA acted as the "strong arm of the Party." They took part in the beer hall feuds and were used for street fighting in battles against political opponents. The SA was also used to disseminate Nazi ideology and propaganda and placed particular emphasis on anti-Semitic propaganda, the doctrine of "Lebensraum," the revision of the Versailles Treaty, and the return of Germany's colonies.

After the Nazi advent to power, and particularly after the elections of 5 March 1933, the SA played an important role in establishing a Nazi reign of terror over Germany. The SA was involved in outbreaks of violence against the Jews and was used to arrest political opponents and to guard concentration camps, where they subjected their prisoners to brutal mistreatment.

On 30 June and 1 and 2 July 1934, a purge of SA leaders occurred. The pretext which was given for this purge, which involved the killing of Röhm, the Chief of Staff of the SA, and many other SA leaders, was the existence of a plot against Hitler. This purge resulted in a great reduction in the influence and power of the SA. After 1934, it rapidly declined in political significance.

After 1934 the SA engaged in certain forms of military or paramilitary training. The SA continued to engage in the dissemination of Nazi propaganda. Isolated units of the SA were even involved in the steps leading up to aggressive war and in the commission of war crimes and crimes against humanity. SA units were among the first in the occupation of Austria in March 1938. The SA supplied many of the men and a large part of the equipment which composed the Sudeten Free Corps of Henlein, although it appears that the corps was under the jurisdiction of SS during its operation in Czechoslovakia.

After the occupation of Poland, the SA group Sudeten was used for transporting prisoners of war. Units of the SA were employed in the guarding of prisoners in Danzig, Posen, Silesia and the Baltic states.

Some SA units were used to blow up synagogues in the Jewish pogrom of 10 and 11 November 1938. Groups of the SA were concerned in the ill-treatment of Jews in the ghettos of Vilna and Kaunas.

Conclusion

Until the purge beginning on 30 June 1934, the SA was a group composed in large part of ruffians and bullies who participated in the Nazi outrages of that period. It has not been shown, however, that these atrocities were part of a specific plan to wage aggressive war, and the Tribunal therefore cannot hold that these activities were criminal under the Charter. After the purge, the SA was reduced to the status of a group of unimportant Nazi hangers-on. Although in specific instances some units of the SA were used for the commission of war crimes and crimes against humanity, it cannot be said that its members generally participated in or even knew of the criminal acts. For these reasons the Tribunal does not declare the SA to be a criminal organization within the meaning of Article 9 of the Charter.

The Reich Cabinet

The Prosecution has named as a criminal organization the Reich Cabinet (Die Reichsregierung) consisting of members of the ordinary Cabinet after 30 January 1933, members of the Council of Ministers for the Defense of the Reich and members of the Secret Cabinet Council. The Tribunal is of opinion that no declaration of criminality should be made with respect to the Reich Cabinet for two reasons:

(1) because it is not shown that after 1937 it ever really acted as a group or organization;

(2) because the group of persons here charged is so small that members could be conveniently tried in proper cases without resort to a declaration that the Cabinet of which they were members was criminal.

As to the first reason for our decision, it is to be observed that from the time that it can be said that a conspiracy to make aggressive war existed, the Reich Cabinet did not constitute a governing body, but was merely an aggregation of administrative officers subject to the absolute control of Hitler. Not a single meeting of the Reich Cabinet was held after 1937, but laws were promulgated in the name of one or more of the cabinet members. The Secret Cabinet Council never met at all. A number of the cabinet members were undoubtedly involved in the conspiracy to make aggressive war; but they were involved as individuals, and there is no evidence that the Cabinet as a group or organization took any part in these

crimes. It will be remembered that when Hitler disclosed his aims of criminal aggression at the Hossbach conference, the disclosure was not made before the Cabinet and that the Cabinet was not consulted with regard to it but, on the contrary, that it was made secretly to a small group upon whom Hitler would necessarily rely in carrying on the war. Likewise no cabinet order authorized the invasion of Poland. On the contrary, the Defendant Schacht testifies that he sought to stop the invasion by a plea to the Commander-in-Chief of the Army that Hitler's order was in violation of the Constitution because not authorized by the Cabinet.

It does appear, however, that various laws authorizing acts which were criminal under the Charter were circulated among the members of the Reich Cabinet and issued under its authority, signed by the members whose departments were concerned. This does not, however, prove that the Reich Cabinet, after 1937, ever really acted as an organization.

As to the second reason, it is clear that those members of the Reich Cabinet who have been guilty of crimes should be brought to trial; and a number of them are now on trial before the Tribunal. It is estimated that there are 48 members of the group, that eight of these are dead and 17 are now on trial, leaving only 23 at the most, as to whom the declaration could have any importance. Any others who are guilty should also be brought to trial; but nothing would be accomplished to expedite or facilitate their trials by declaring the Reich Cabinet to be a criminal organization. Where an organization with a large membership is used for such purposes, a declaration obviates the necessity of inquiring as to its criminal character in the later trial of members who are accused of participating through membership in its criminal purposes and thus saves much time and trouble. There is no such advantage in the case of a small group like the Reich Cabinet.

General Staff and High Command

The Prosecution has also asked that the General Staff and High Command of the German Armed Forces be declared a criminal organization. The Tribunal believes that no declaration of criminality should be made with respect to the General Staff and High Command. The number of persons charged, while larger than that of the Reich Cabinet, is still so small that individual trials of these officers would accomplish the purpose here sought better than a declaration such as is requested. But a more compelling reason is that in the opinion of the Tribunal the General Staff and High Command is neither an "organization" nor a "group" within the meaning of those terms as used in Article 9 of the Charter.

Some comment on the nature of this alleged group is requisite. According to the Indictment and evidence before the Tribunal, it consists of approximately 130 officers, living and dead, who at any time during the period from February 1938, when Hitler reorganized the Armed Forces, and May 1945, when Germany surrendered, held certain positions in the military hierarchy. These men were high-ranking officers in the three armed services: OKH, Army; OKM, Navy; and OKL, Air Force. Above them was the overall Armed Forces authority, OKW, High Command of the German Armed Forces, with Hitler as the Supreme Commander. The officers in the OKW, including Defendant Keitel as Chief of the High Command, were in a sense Hitler's personal staff. In the larger sense they co-ordinated and directed the three services, with particular emphasis on the functions of planning and operations.

The individual officers in this alleged group were, at one time or another, in one of four categories: 1) commanders-in-chief of one of the three services; 2) chief of staff of one of the three services; 3) "Oberbefehlshaber," the field commanders-in-chief of one of the three services, which of course comprised by far the largest number of these persons; or 4) an OKW officer, of which there were three, Defendants Keitel and Jodl, and the latter's deputy chief, Warlimont. This is the meaning of the Indictment in its use of the term "General Staff and High Command."

The Prosecution has here drawn the line. The Prosecution does not indict the next level of the military hierarchy, consisting of commanders of army corps, and equivalent ranks in the Navy and Air Force, nor the level below, the division commanders or their equivalent in the other branches. And the staff officers of the four staff commands of OKW, OKH, OKM, and OKL are not included, nor are the trained specialists who were customarily called General Staff officers.

In effect, then, those indicted as members are military leaders of the Reich of the highest rank. No serious effort was made to assert that they composed an "organization" in the sense of Article 9. The assertion is rather that they were a "group," which is a wider and more embracing term than "organization."

The Tribunal does not so find. According to the evidence, their planning at staff level, the constant conferences between staff officers and field commanders, their operational technique in the field and at headquarters, was much the same as that of the armies, navies, and air forces of all other countries. The overall effort of the OKW at co-ordination and direction could be matched by a similar, though not identical, form of organization in other military forces, such as the Anglo-American Combined Chiefs of Staff.

To derive from this pattern of their activities the existence of an association or group does not, in the opinion of the Tribunal, logically follow. On such a theory the top commanders of every other nation are just such an association rather than what they actually are, an aggregation of military men, a number of individuals who happen at a given period of time to hold the high-ranking military positions.

Much of the evidence and the argument has centered around the question of whether membership in these organizations was or was not voluntary; in this case, it seems to the Tribunal to be quite beside the point. For this alleged criminal organization has one characteristic, a controlling one, which sharply distinguishes it from the other five indicted. When an individual became a member of the SS, for instance, he did so voluntarily or otherwise, but certainly with the knowledge that he was joining something. In the case of the General Staff and High Command, however, he could not know he was joining a group or association, for such an association did not exist except in the charge of the Indictment. He knew only that he had achieved a certain high rank in one of the three services, and could not be conscious of the fact that he was becoming a member of anything so tangible as a "group," as that word is commonly used. His relations with his brother officers in his own branch of the service and his association with those of the other two branches were, in general, like those of other services all over the world.

The Tribunal therefore does not declare the General Staff and High Command to be a criminal organization.

Although the Tribunal is of the opinion that the term "group" in Article 9 must mean something more than this collection of military officers, it has heard much evidence as to the participation of these officers in planning and waging aggressive war, and in committing war crimes and crimes against humanity. This evidence is, as to many of them, clear and convincing.

They have been responsible in large measure for the miseries and suffering that have fallen on millions of men, women, and children. They have been a disgrace to the honorable profession of arms. Without their military guidance the aggressive ambitions of Hitler and his fellow-Nazis would have been academic and sterile. Although they were not a group falling within the words of the Charter, they were certainly a ruthless military caste. The contemporary German militarism flourished briefly with its recent ally, National Socialism, as well as or better than it had in the generations of the past.

Many of these men have made a mockery of the soldier's oath of obedience to military orders. When it suits their defense they say

they had to obey; when confronted with Hitler's brutal crimes, which are shown to have been within their general knowledge, they say they disobeyed. The truth is that they actively participated in all these crimes, or sat silent and acquiescent, witnessing the commission of crimes on a scale larger and more shocking than the world has ever had the misfortune to know. This must be said.

Where the facts warrant it, these men should be brought to trial so that those among them who are guilty of these crimes should not escape punishment.

The Tribunal will sit tomorrow at 9:30 A.M., and the Tribunal will now adjourn.

[The Tribunal adjourned until 1 October 1946 at 0930 hours.]

TWO HUNDRED AND EIGHTEENTH DAY

Tuesday, 1 October 1946

Morning Session

THE PRESIDENT: There is a correction which the Tribunal wishes to make in the Judgment pronounced yesterday at Page 159, with reference to the SD.

The Tribunal's attention has been drawn to the fact that the Prosecution expressly excluded honorary informers who were not members of the SS and members of the Abwehr who were transferred to the SD. In view of that exclusion by the Prosecution, the Tribunal also excludes those persons from the SD, which was declared criminal.

Article 26 of the Charter provides that the Judgment of the Tribunal as to the guilt or innocence of any defendant shall give the reasons on which it is based.

The Tribunal will now state those reasons in declaring its Judgment on such guilt or innocence.

GÖRING

Göring is indicted on all four Counts. The evidence shows that after Hitler he was the most prominent man in the Nazi regime. He was Commander-in-Chief of the Luftwaffe, Plenipotentiary for the Four Year Plan, and had tremendous influence with Hitler, at least until 1943, when their relationship deteriorated, ending in his arrest in 1945. He testified that Hitler kept him informed of all important military and political problems.

Crimes against Peace

From the moment he joined the Party in 1922 and took command of the street-fighting organization, the SA, Göring was the adviser, the active agent of Hitler, and one of the prime leaders of the Nazi movement. As Hitler's political deputy he was largely instrumental in bringing the National Socialists to power in 1933 and was charged with consolidating this power and expanding German armed might. He developed the Gestapo and created the first concentration camps, relinquishing them to Himmler in 1934, conducted the Röhm purge

in that year, and engineered the sordid proceedings which resulted in the removal of Von Blomberg and Von Fritsch from the Army. In 1936 he became Plenipotentiary for the Four Year Plan and in theory and in practice was the economic dictator of the Reich. Shortly after the Pact of Munich, he announced that he would embark on a five-fold expansion of the Luftwaffe and speed up rearmament with emphasis on offensive weapons.

Göring was one of the five important leaders present at the Hossbach conference of 5 November 1937, and he attended the other important conferences already discussed in this Judgment. In the Austrian Anschluss he was indeed the central figure, the ringleader. He said in court: "I must take 100 percent responsibility.... I even overruled objections by the Führer and brought everything to its final development." In the seizure of the Sudetenland, he played his role as Luftwaffe chief by planning an air offensive which proved unnecessary, and his role as a politician by lulling the Czechs with false promises of friendship. The night before the invasion of Czechoslovakia and the absorption of Bohemia and Moravia, at a conference with Hitler and President Hacha, he threatened to bomb Prague if Hacha did not submit. This threat he admitted in his testimony.

Göring attended the Reich Chancellery meeting of 23 May 1939, when Hitler told his military leaders "there is, therefore, no question of sparing Poland," and was present at the Obersalzberg briefing of 22 August 1939. And the evidence shows he was active in the diplomatic maneuvers which followed. With Hitler's connivance, he used the Swedish businessman, Dahlerus, as a go-between to the British, as described by Dahlerus to this Tribunal, to try to prevent the British Government from keeping its guarantee to the Poles.

He commanded the Luftwaffe in the attack on Poland and throughout the aggressive wars which followed.

Even if he opposed Hitler's plans against Norway and the Soviet Union, as he alleged, it is clear that he did so only for strategic reasons; once Hitler had decided the issue, he followed him without hesitation. He made it clear in his testimony that these differences were never ideological or legal. He was "in a rage" about the invasion of Norway, but only because he had not received sufficient warning to prepare the Luftwaffe offensive. He admitted he approved of the attack: "My attitude was perfectly positive." He was active in preparing and executing the Yugoslavian and Greek campaigns and testified that "Plan Marita," the attack on Greece, had been prepared long beforehand. The Soviet Union he regarded as the "most threatening menace to Germany," but said there was no immediate military necessity for the attack. Indeed,

his only objection to the war of aggression against the U.S.S.R. was its timing; he wished for strategic reasons to delay until Britain was conquered. He testified: "My point of view was decided by political and military reasons only."

After his own admissions to this Tribunal, from the positions which he held, the conferences he attended, and the public words he uttered, there can remain no doubt that Göring was the moving force for aggressive war second only to Hitler. He was the planner and prime mover in the military and diplomatic preparation for war which Germany pursued.

War Crimes and Crimes against Humanity

The record is filled with Göring's admissions of his complicity in the use of slave labor. "We did use this labor for security reasons so that they would not be active in their own country and would not work against us. On the other hand, they served to help in the economic war." And again: "Workers were forced to come to the Reich. That is something I have not denied." The man who spoke these words was Plenipotentiary for the Four Year Plan charged with the recruitment and allocation of manpower. As Luftwaffe Commander-in-Chief he demanded from Himmler more slave laborers for his underground aircraft factories: "That I requested inmates of concentration camps for the armament of the Luftwaffe is correct and it is to be taken as a matter of course."

As plenipotentiary, Göring signed a directive concerning the treatment of Polish workers in Germany and implemented it by regulations of the SD, including "special treatment." He issued directives to use Soviet and French prisoners of war in the armament industry; he spoke of seizing Poles and Dutch and making them prisoners of war if necessary, and using them for work. He agrees Russian prisoners of war were used to man anti-aircraft batteries.

As plenipotentiary, Göring was the active authority in the spoliation of conquered territory. He made plans for the spoliation of Soviet territory long before the war on the Soviet Union. Two months prior to the invasion of the Soviet Union, Hitler gave Göring the overall direction for the economic administration in the territory. Göring set up an economic staff for this function. As Reich Marshal of the Greater German Reich, "the orders of the Reich Marshal cover all economic fields, including nutrition and agriculture." His so-called "Green" folder, printed by the Wehrmacht, set up an "Economic Executive Staff East." This directive contemplated plundering and abandonment of all industry in the food deficit regions and, from the food surplus regions, a diversion of food to German needs. Göring claims its purposes have been misunderstood,

but admits "that as a matter of course and a matter of duty we would have used Russia for our purposes" when conquered.

And he participated in the conference of 16 July when Hitler said the National Socialists had no intention of ever leaving the occupied countries, and that "all necessary measures—shooting, resettling, *et cetera*—" should be taken.

Göring persecuted the Jews, particularly after the November 1938 riots, and not only in Germany, where he raised the billion-mark fine as stated elsewhere, but in the conquered territories as well. His own utterances then and his testimony now shows this interest was primarily economic—how to get their property and how to force them out of the economic life of Europe. As these countries fell before the German Army, he extended the Reich anti-Jewish laws to them; the *Reichsgesetzblatt* for 1939, 1940, and 1941 contains several anti-Jewish decrees signed by Göring. Although their extermination was in Himmler's hands, Göring was far from disinterested or inactive, despite his protestations in the witness box. By decree of 31 July 1941 he directed Himmler and Heydrich to "bring about a complete solution of the Jewish question in the German sphere of influence in Europe."

There is nothing to be said in mitigation. For Göring was often, indeed almost always, the moving force, second only to his leader. He was the leading war aggressor, both as political and as military leader; he was the director of the slave labor program and the creator of the oppressive program against the Jews and other races, at home and abroad. All of these crimes he has frankly admitted. On some specific cases there may be conflict of testimony, but in terms of the broad outline his own admissions are more than sufficiently wide to be conclusive of his guilt. His guilt is unique in its enormity. The record discloses no excuses for this man.

Conclusion

The Tribunal finds the Defendant Göring guilty on all four Counts of the Indictment.

HESS

Hess is indicted under all four Counts. He joined the Nazi Party in 1920 and participated in the Munich Putsch on 9 November 1923. He was imprisoned with Hitler in the Landsberg fortress in 1924 and became Hitler's closest personal confidant, a relationship which lasted until Hess' flight to the British Isles. On 21 April 1933, he was appointed Deputy to the Führer, and on 1 December 1933 was made Reich Minister without Portfolio. He was appointed member of the Secret Cabinet Council on 4 February 1938, and a member of

the Ministerial Council for the Defense of the Reich on 31 August 1939. In September 1939, Hess was officially announced by Hitler as successor designate to the Führer after Göring. On 10 May 1941, he flew from Germany to Scotland.

Crimes against Peace

As Deputy to the Führer, Hess was the top man in the Nazi Party with responsibility for handling all Party matters and authority to make decisions in Hitler's name on all questions of Party leadership. As Reich Minister without Portfolio he had the authority to approve all legislation suggested by the different Reich Ministers before it could be enacted as law. In these positions, Hess was an active supporter of preparations for war. His signature appears on the law of 16 March 1935, establishing compulsory military service. Throughout the years he supported Hitler's policy of vigorous rearmament in many speeches. He told the people that they must sacrifice for armaments, repeating the phrase, "Guns instead of butter." It is true that between 1933 and 1937 Hess made speeches in which he expressed a desire for peace and advocated international economic co-operation. But nothing which they contained can alter the fact that of all the defendants none knew better than Hess how determined Hitler was to realize his ambitions, how fanatical and violent a man he was, and how little likely he was to refrain from resort to force, if this was the only way in which he could achieve his aims.

Hess was an informed and willing participant in German aggression against Austria, Czechoslovakia, and Poland. He was in touch with the illegal Nazi Party in Austria throughout the entire period between the murder of Dollfuss and the Anschluss and gave instructions to it during that period. Hess was in Vienna on 12 March 1938, when the German troops moved in; and on 13 March 1938 he signed the law for the reunion of Austria within the German Reich. A law of 10 June 1939 provided for his participation in the administration of Austria. On 24 July 1938, he made a speech in commemoration of the unsuccessful Putsch by Austrian National Socialists which had been attempted 4 years before, praising the steps leading up to the Anschluss and defending the occupation of Austria by Germany.

In the summer of 1938 Hess was in active touch with Henlein, Chief of the Sudeten German Party in Czechoslovakia. On 27 September 1938, at the time of the Munich crisis, he arranged with Keitel to carry out the instructions of Hitler to make the machinery of the Nazi Party available for a secret mobilization. On 14 April 1939, Hess signed a decree setting up the Government of the Sudetenland as an integral part of the Reich; and an ordinance of 10 June 1939 provided for his participation in the administration of

the Sudetenland. On 7 November 1938, Hess absorbed Henlein's Sudeten German Party into the Nazi Party and made a speech in which he emphasized that Hitler had been prepared to resort to war if this had been necessary to acquire the Sudetenland.

On 27 August 1939, when the attack on Poland had been temporarily postponed in an attempt to induce Great Britain to abandon its guarantee to Poland, Hess publicly praised Hitler's "magnanimous offer" to Poland and attacked Poland for agitating for war and England for being responsible for Poland's attitude. After the invasion of Poland Hess signed decrees incorporating Danzig and certain Polish territories into the Reich and setting up the Government General (Poland).

These specific steps which this defendant took in support of Hitler's plans for aggressive action do not indicate the full extent of his responsibility. Until his flight to England, Hess was Hitler's closest personal confidant. Their relationship was such that Hess must have been informed of Hitler's aggressive plans when they came into existence. And he took action to carry out these plans whenever action was necessary.

With him on his flight to England, Hess carried certain peace proposals which he alleged Hitler was prepared to accept. It is significant to note that this flight took place only 10 days after the date on which Hitler fixed 22 June 1941 as the time for attacking the Soviet Union. In conversations carried on after his arrival in England, Hess wholeheartedly supported all Germany's aggressive actions up to that time and attempted to justify Germany's action in connection with Austria, Czechoslovakia, Poland, Norway, Denmark, Belgium, and the Netherlands. He blamed England and France for the war.

War Crimes and Crimes against Humanity

There is evidence showing the participation of the Party Chancellery, under Hess, in the distribution of orders connected with the commission of War Crimes; that Hess may have had knowledge of, even if he did not participate in, the crimes that were being committed in the East, and proposed laws discriminating against Jews and Poles; and that he signed decrees forcing certain groups of Poles to accept German citizenship. The Tribunal, however, does not find that the evidence sufficiently connects Hess with these crimes to sustain a finding of guilt.

As previously indicated the Tribunal found, after a full medical examination of and report on the condition of this defendant, that he should be tried, without any postponement of his case. Since that time further motions have been made that he should again be

examined. These the Tribunal denied, after having had a report from the prison psychologist. That Hess acts in an abnormal manner, suffers from loss of memory, and has mentally deteriorated during this Trial, may be true. But there is nothing to show that he does not realize the nature of the charges against him, or is incapable of defending himself. He was ably represented at the Trial by counsel, appointed for that purpose by the Tribunal. There is no suggestion that Hess was not completely sane when the acts charged against him were committed.

Conclusion

The Tribunal finds the Defendant Hess guilty on Counts One and Two; and not guilty on Counts Three and Four.

VON RIBBENTROP

Ribbentrop is indicted under all four Counts. He joined the Nazi Party in 1932. By 1933 he had been made foreign policy adviser to Hitler, and in the same year the representative of the Nazi Party on foreign policy. In 1934 he was appointed Delegate for Disarmament Questions and in 1935 Minister Plenipotentiary at Large, a capacity in which he negotiated the Anglo-German Naval Agreement in 1935 and the Anti-Comintern Pact in 1936. On 11 August 1936 he was appointed Ambassador to England. On 4 February 1938, he succeeded Von Neurath as Reich Minister for Foreign Affairs as part of the general reshuffle which accompanied the dismissal of Von Fritsch and Von Blomberg.

Crimes against Peace

Ribbentrop was not present at the Hossbach conference held on 5 November 1937, but on 2 January 1938, while still Ambassador to England, he sent a memorandum to Hitler indicating his opinion that a change in the *status quo* in the East in the German sense could only be carried out by force and suggesting methods to prevent England and France from intervening in a European war fought to bring about such a change. When Ribbentrop became Foreign Minister, Hitler told him that Germany still had four problems to solve: Austria, Sudetenland, Memel, and Danzig, and mentioned the possibility of "some sort of a show-down" or "military settlement" for their solution.

On 12 February 1938, Ribbentrop attended the conference between Hitler and Schuschnigg at which Hitler, by threats of invasion, forced Schuschnigg to grant a series of concessions designed to strengthen the Nazis in Austria, including the appointment of Seyss-Inquart as Minister of Security and Interior, with control over the Police. Ribbentrop was in London when the occupation of Austria

was actually carried out and, on the basis of information supplied him by Göring, informed the British Government that Germany had not presented Austria with an ultimatum, but had intervened in Austria only to prevent civil war. On 13 March 1938, Ribbentrop signed the law incorporating Austria into the German Reich.

Ribbentrop participated in the aggressive plans against Czechoslovakia. Beginning in March 1938, he was in close touch with the Sudeten German Party and gave them instructions which had the effect of keeping the Sudeten German question a live issue which might serve as an excuse for the attack which Germany was planning against Czechoslovakia. In August 1938 he participated in a conference for the purpose of obtaining Hungarian support in the event of a war with Czechoslovakia. After the Munich Pact he continued to bring diplomatic pressure with the object of occupying the remainder of Czechoslovakia. He was instrumental in inducing the Slovaks to proclaim their independence. He was present at the conference of 14 and 15 March 1939, at which Hitler, by threats of invasion, compelled President Hacha to consent to the German occupation of Czechoslovakia. After the German troops had marched in, Ribbentrop signed the law establishing a protectorate over Bohemia and Moravia.

Ribbentrop played a particularly significant role in the diplomatic activity which led up to the attack on Poland. He participated in a conference held on 12 August 1939 for the purpose of obtaining Italian support if the attack should lead to a general European war. Ribbentrop discussed the German demands with respect to Danzig and the Polish Corridor with the British Ambassador in the period from 25 August to 30 August 1939, when he knew that the German plans to attack Poland had merely been temporarily postponed in an attempt to induce the British to abandon their guarantee to the Poles. The way in which he carried out these discussions makes it clear that he did not enter into them in good faith in an attempt to reach a settlement of the difficulties between Germany and Poland.

Ribbentrop was advised in advance of the attack on Norway and Denmark and of the attack on the Low Countries and prepared the official Foreign Office memoranda attempting to justify these aggressive actions.

Ribbentrop attended the conference on 20 January 1941, at which Hitler and Mussolini discussed the proposed attack on Greece, and the conference in January 1941, at which Hitler obtained from Antonescu permission for German troops to go through Romania for this attack. On 25 March 1941, when Yugoslavia adhered to the Axis Tri-Partite Pact, Ribbentrop had assured Yugoslavia that Germany would respect its sovereignty and territorial integrity. On 27 March 1941 he attended the meeting, held after the *coup d'état*

in Yugoslavia, at which plans were made to carry out Hitler's announced intention to destroy Yugoslavia.

Von Ribbentrop attended a conference in May 1941 with Hitler and Antonescu relating to Romanian participation in the attack on the U.S.S.R. He also consulted with Rosenberg in the preliminary planning for the political exploitation of Soviet territories and in July 1941, after the outbreak of war, urged Japan to attack the Soviet Union.

War Crimes and Crimes against Humanity

Ribbentrop participated in a meeting of 6 June 1944, at which it was agreed to start a program under which Allied aviators carrying out machine gun attacks should be lynched. In December 1944 Ribbentrop was informed of the plans to murder one of the French generals held as a prisoner of war and directed his subordinates to see that the details were worked out in such a way as to prevent its detection by the protecting powers. Ribbentrop is also responsible for War Crimes and Crimes against Humanity because of his activities with respect to occupied countries and Axis satellites. The top German official in both Denmark and Vichy France was a Foreign Office representative, and Ribbentrop is therefore responsible for the general economic and political policies put into effect in the occupation of these countries. He urged the Italians to adopt a ruthless occupation policy in Yugoslavia and Greece.

He played an important part in Hitler's "final solution" of the Jewish question. In September 1942 he ordered the German diplomatic representatives accredited to various Axis satellites to hasten the deportation of Jews to the East. In June 1942 the German Ambassador to Vichy requested Laval to turn over 50,000 Jews for deportation to the East. On 25 February 1943, Ribbentrop protested to Mussolini against Italian slowness in deporting Jews from the Italian occupation zone of France. On 17 April 1943, he took part in a conference between Hitler and Horthy on the deportation of Jews from Hungary and informed Horthy that the "Jews must either be exterminated or taken to concentration camps." At the same conference Hitler had likened the Jews to "tuberculosis bacilli" and said if they did not work they were to be shot.

Ribbentrop's defense to the charges made against him is that Hitler made all the important decisions, and that he was such a great admirer and faithful follower of Hitler that he never questioned Hitler's repeated assertions that he wanted peace or the truth of the reasons that Hitler gave in explaining aggressive action. The Tribunal does not consider this explanation to be true. Ribbentrop participated in all of the Nazi aggressions from the occupation of Austria to the invasion of the Soviet Union. Although he was

personally concerned with the diplomatic rather than the military aspect of these actions, his diplomatic efforts were so closely connected with war that he could not have remained unaware of the aggressive nature of Hitler's actions. In the administration of territories over which Germany acquired control by illegal invasion, Ribbentrop also assisted in carrying out criminal policies, particularly those involving the extermination of the Jews. There is abundant evidence, moreover, that Ribbentrop was in complete sympathy with all the main tenets of the National Socialist creed, and that his collaboration with Hitler and with other defendants in the commission of Crimes against Peace, War Crimes and Crimes against Humanity was whole-hearted. It was because Hitler's policy and plans coincided with his own ideas that Ribbentrop served him so willingly to the end.

Conclusion

The Tribunal finds that Ribbentrop is guilty on all four Counts.

KEITEL

Keitel is indicted on all four Counts. He was Chief of Staff to the then Minister of War Von Blomberg from 1935 to 4 February 1938; on that day Hitler took command of the Armed Forces, making Keitel Chief of the High Command of the Armed Forces. Keitel did not have command authority over the three Wehrmacht branches which enjoyed direct access to the Supreme Commander. OKW was in effect Hitler's military staff.

Crimes against Peace

Keitel attended the Schuschnigg conference in February 1938 with two other generals. Their presence, he admitted, was a "military demonstration," but since he had been appointed OKW chief just one week before, he had not known why he had been summoned. Hitler and Keitel then continued to put pressure on Austria with false rumors, broadcasts, and troop maneuvers. Keitel made the military and other arrangements and Jodl's diary noted "the effect is quick and strong." When Schuschnigg called his plebiscite, Keitel that night briefed Hitler and his generals, and Hitler issued "Case Otto" which Keitel initialed.

On 21 April 1938 Hitler and Keitel considered making use of a possible "incident," such as the assassination of the German Minister at Prague, to preface the attack on Czechoslovakia. Keitel signed many directives and memoranda on "Fall Grün," including the directive of 30 May, containing Hitler's statement: "It is my unalterable decision to smash Czechoslovakia by military action in the near future." After Munich, Keitel initialed Hitler's directive for the

attack on Czechoslovakia and issued two supplements. The second supplement said the attack should appear to the outside world as "merely an act of pacification, and not a warlike undertaking." The OKW chief attended Hitler's negotiations with Hacha when the latter surrendered.

Keitel was present on 23 May 1939 when Hitler announced his decision "to attack Poland at the first suitable opportunity." Already he had signed the directive requiring the Wehrmacht to submit its "Fall Weiss" timetable to OKW by 1 May.

The invasion of Norway and Denmark he discussed on 12 December 1939 with Hitler, Jodl, and Raeder. By directive of 27 January 1940 the Norway plans were placed under Keitel's "direct and personal guidance." Hitler had said on 23 May 1939 he would ignore the neutrality of Belgium and the Netherlands, and Keitel signed orders for these attacks on 15 October, 20 November, and 28 November 1939. Orders postponing this attack 17 times until spring 1940 all were signed by Keitel or Jodl.

Formal planning for attacking Greece and Yugoslavia had begun in November 1940. On 18 March 1941 Keitel heard Hitler tell Raeder that complete occupation of Greece was a prerequisite to settlement, and also heard Hitler decree on 27 March that the destruction of Yugoslavia should take place with "unmerciful harshness."

Keitel testified that he opposed the invasion of the Soviet Union for military reasons, and also because it would constitute a violation of the Non-Aggression Pact. Nevertheless he initialed "Case Barbarossa," signed by Hitler on 18 December 1940, and attended the OKW discussion with Hitler on 3 February 1941. Keitel's supplement of 13 March established the relationship between the military and political officers. He issued his timetable for the invasion on 6 June 1941 and was present at the briefing of 14 June when the generals gave their final reports before attack. He appointed Jodl and Warlimont as OKW representatives to Rosenberg on matters concerning the Eastern territories. On 16 June he directed all Army units to carry out the economic directives issued by Göring in the so-called "Green Folder" for the exploitation of Russian territory, food, and raw materials.

War Crimes and Crimes against Humanity

On 4 August 1942 Keitel issued a directive that paratroopers were to be turned over to the SD. On 18 October Hitler issued the Commando Order, which was carried out in several instances. After the landing in Normandy, Keitel reaffirmed the order, and later extended it to Allied missions fighting with partisans. He admits

he did not believe the order was legal, but claims he could not stop Hitler.

When, on 8 September 1941, OKW issued its ruthless regulations for Soviet prisoners of war, Canaris wrote to Keitel that under international law the SD should have nothing to do with this. On this memorandum, in Keitel's handwriting, dated 23 September and initialed by him, is the statement: "The objections arise from the military concept of chivalrous warfare. This is the destruction of an ideology. Therefore I approve and back the measures." Keitel testified that he really agreed with Canaris and argued with Hitler, but lost. The OKW chief directed the military authorities to cooperate with the Einsatzstab Rosenberg in looting cultural property in occupied territories.

Lahousen testified that Keitel told him on 12 September 1939, while aboard Hitler's headquarters train, that the Polish intelligentsia, nobility, and Jews were to be liquidated. On 20 October, Hitler told Keitel the intelligentsia would be prevented from forming a ruling class, the standard of living would remain low, and Poland would be used only for labor forces. Keitel does not remember the Lahousen conversation, but admits there was such a policy and that he had protested without effect to Hitler about it.

On 16 September 1941, Keitel ordered that attacks on soldiers in the East should be met by putting to death 50 to 100 Communists for one German soldier, with the comment that human life was less than nothing in the East. On 1 October he ordered military commanders always to have hostages to execute when German soldiers were attacked. When Terboven, the Reich Commissioner in Norway, wrote Hitler that Keitel's suggestion that workmen's relatives be held responsible for sabotage, could work only if firing squads were authorized, Keitel wrote on this memorandum in the margin: "Yes, that is the best."

On 12 May 1941, five weeks before the invasion of the Soviet Union, the OKW urged upon Hitler a directive of the OKH that political commissars be liquidated by the Army. Keitel admitted the directive was passed on to field commanders. And on 13 May Keitel signed an order that civilians suspected of offenses against troops should be shot without trial, and that prosecution of German soldiers for offenses against civilians was unnecessary. On 27 July all copies of this directive were ordered destroyed without affecting its validity. Four days previously he had signed another order that legal punishment was inadequate and troops should use terrorism.

On 7 December 1941, as already discussed in this opinion, the so-called "Nacht und Nebel" decree, over Keitel's signature, provided that in occupied territories civilians who had been accused of crimes of resistance against the army of occupation would be

tried only if a death sentence was likely; otherwise they would be handed over to the Gestapo for transportation to Germany.

Keitel directed that Russian prisoners of war be used in German war industry. On 8 September 1942 he ordered French, Dutch, and Belgian citizens to work on the Atlantic Wall. He was present on 4 January 1944 when Hitler directed Sauckel to obtain 4 million new workers from occupied territories.

In the face of these documents Keitel does not deny his connection with these acts. Rather, his defense relies on the fact that he is a soldier and on the doctrine of "superior orders," prohibited by Article 8 of the Charter as a defense.

There is nothing in mitigation. Superior orders, even to a soldier, cannot be considered in mitigation where crimes so shocking and extensive have been committed consciously, ruthlessly, and without military excuse or justification.

Conclusion

The Tribunal finds Keitel guilty on all four Counts.

KALTENBRUNNER

Kaltenbrunner is indicted under Counts One, Three, and Four. He joined the Austrian Nazi Party and the SS in 1932. In 1935 he became leader of the SS in Austria. After the Anschluss he was appointed Austrian State Secretary for Security and, when this position was abolished in 1941, he was made Higher SS and Police Leader. On 30 January 1943, he was appointed Chief of the Security Police and SD and head of the Reich Security Head Office (RSHA), a position which had been held by Heydrich until his assassination in June 1942. He held the rank of Obergruppenführer in the SS.

Crimes against Peace

As leader of the SS in Austria Kaltenbrunner was active in the Nazi intrigue against the Schuschnigg Government. On the night of 11 March 1938, after Göring had ordered Austrian National Socialists to seize control of the Austrian Government, 500 Austrian SS men under Kaltenbrunner's command surrounded the Federal Chancellery and a special detachment under the command of his adjutant entered the Federal Chancellery while Seyss-Inquart was negotiating with President Miklas. But there is no evidence connecting Kaltenbrunner with plans to wage aggressive war on any other front. The Anschluss, although it was an aggressive act, is not charged as an aggressive war, and the evidence against Kaltenbrunner under Count One does not, in the opinion of the

Tribunal, show his direct participation in any plan to wage such a war.

War Crimes and Crimes against Humanity

When he became Chief of the Security Police and SD and head of the RSHA on 30 January 1943, Kaltenbrunner took charge of an organization which included the main offices of the Gestapo, the SD, and the Criminal Police. As Chief of the RSHA, Kaltenbrunner had authority to order protective custody to and release from concentration camps. Orders to this effect were normally sent over his signature. Kaltenbrunner was aware of conditions in concentration camps. He had undoubtedly visited Mauthausen, and witnesses testified that he had seen prisoners killed by the various methods of execution, hanging, shooting in the back of the neck, and gassing, as part of a demonstration. Kaltenbrunner himself ordered the execution of prisoners in those camps and his office was used to transmit to the camps execution orders which originated in Himmler's office. At the end of the war Kaltenbrunner participated in the arrangements for the evacuation of inmates of concentration camps, and the liquidation of many of them, to prevent them from being liberated by the Allied armies.

During the period in which Kaltenbrunner was head of the RSHA, it was engaged in a widespread program of War Crimes and Crimes against Humanity. These crimes included the mistreatment and murder of prisoners of war. Einsatzkommandos operating under the control of the Gestapo were engaged in the screening of Soviet prisoners of war. Jews, commissars, and others who were thought to be ideologically hostile to the Nazi system were reported to the RSHA, which had them transferred to a concentration camp and murdered. An RSHA order issued during Kaltenbrunner's regime established the "Bullet Decree," under which certain escaped prisoners of war who were recaptured were taken to Mauthausen and shot. The order for the execution of Commando troops was extended by the Gestapo to include parachutists while Kaltenbrunner was chief of the RSHA. An order signed by Kaltenbrunner instructed the Police not to interfere with attacks on bailed-out Allied fliers. In December 1944 Kaltenbrunner participated in the murder of one of the French generals held as a prisoner of war.

During the period in which Kaltenbrunner was head of the RSHA, the Gestapo and SD in occupied territories continued the murder and ill-treatment of the population, using methods which included torture and confinement in concentration camps, usually under orders to which Kaltenbrunner's name was signed.

The Gestapo was responsible for enforcing a rigid labor discipline on the slave laborers and Kaltenbrunner established a series

of labor reformatory camps for this purpose. When the SS embarked on a slave labor program of its own, the Gestapo was used to obtain the needed workers by sending laborers to concentration camps.

The RSHA played a leading part in the "final solution" of the Jewish question by the extermination of the Jews. A special section under the Amt IV of the RSHA was established to supervise this program. Under its direction approximately 6 million Jews were murdered, of which 2 million were killed by Einsatzgruppen and other units of the Security Police. Kaltenbrunner had been informed of the activities of these Einsatzgruppen when he was a Higher SS and Police Leader, and they continued to function after he had become Chief of the RSHA.

The murder of approximately 4 million Jews in concentration camps has heretofore been described. This part of the program was also under the supervision of the RSHA when Kaltenbrunner was head of that organization, and special missions of the RSHA scoured the occupied territories and the various Axis satellites arranging for the deportation of Jews to these extermination institutions. Kaltenbrunner was informed of these activities. A letter which he wrote on 30 June 1944 described the shipment to Vienna of 12,000 Jews for that purpose and directed that all who could not work would have to be kept in readiness for "special action," which meant murder. Kaltenbrunner denied his signature to this letter, as he did on a very large number of orders on which his name was stamped or typed, and in a few instances, written. It is inconceivable that in matters of such importance his signature could have appeared so many times without his authority.

Kaltenbrunner has claimed that when he took office as Chief of the Security Police and SD and as head of the RSHA he did so pursuant to an understanding with Himmler under which he was to confine his activities to matters involving foreign intelligence and not to assume overall control over the activities of the RSHA. He claims that the criminal program had been started before his assumption of office; that he seldom knew what was going on; and that when he was informed he did what he could to stop them. It is true that he showed a special interest in matters involving foreign intelligence. But he exercised control over the activities of the RSHA, was aware of the crimes it was committing, and was an active participant in many of them.

Conolusion

The Tribunal finds that Kaltenbrunner is not guilty on Count One. He is guilty under Counts Three and Four.

GEN. NIKITCHENKO:

ROSENBERG

Rosenberg is indicted on all four Counts. He joined the Nazi Party in 1919, participated in the Munich Putsch of 9 November 1923, and tried to keep the illegal Nazi Party together while Hitler was in jail. Recognized as the Party's ideologist, he developed and spread Nazi doctrines in the newspapers *Völkischer Beobachter* and *NS Monatshefte,* which he edited, and in the numerous books he wrote. His book *Myth of the Twentieth Century* had a circulation of over a million copies.

In 1930 Rosenberg was elected to the Reichstag and he became the Party's representative for Foreign Affairs. In April 1933 he was made Reichsleiter and head of the Office of Foreign Affairs of the NSDAP (The APA). Hitler, in January 1934, appointed Rosenberg his deputy for the supervision of the entire spiritual and ideological training of the NSDAP. In January 1940, he was designated to set up the "Hohe Schule," the center of National Socialist ideological and educational research, and he organized the "Einsatzstab Rosenberg" in connection with this task. He was appointed Reich Minister for the Occupied Eastern Territories on 17 July 1941.

Crimes against Peace

As head of the APA, Rosenberg was in charge of an organization whose agents were active in Nazi intrigue in all parts of the world. His own reports, for example, claim that the APA was largely responsible for Romania's joining the Axis. As head of the APA, he played an important role in the preparation and planning of the attack on Norway.

Rosenberg, together with Raeder, was one of the originators of the plan for attacking Norway. Rosenberg had become interested in Norway as early as June 1939, when he conferred with Quisling. Quisling had pointed out the importance of the Norwegian coast in the event of a conflict between Germany and Great Britain and stated his fears that Great Britain might be able to obtain Norwegian assistance. As a result of this conference Rosenberg arranged for Quisling to collaborate closely with the National Socialists and to receive political assistance by the Nazis.

When the war broke out Quisling began to express fear of British intervention in Norway. Rosenberg supported this view and transmitted to Raeder a plan to use Quisling for a coup in Norway. Rosenberg was instrumental in arranging the conferences in December 1939 between Hitler and Quisling which led to the preparation of the attack on Norway and at which Hitler promised Quisling financial assistance. After these conferences Hitler assigned to

Rosenberg the political exploitation of Norway. Two weeks after Norway was occupied, Hitler told Rosenberg that he had based his decision to attack Norway "on the continuous warnings of Quisling as reported to him by Reichsleiter Rosenberg."

Rosenberg bears a major responsibility for the formulation and execution of occupation policies in the Occupied Eastern Territories. He was informed by Hitler, on 2 April 1941, of the coming attack against the Soviet Union, and he agreed to help in the capacity of a "Political Adviser." On 20 April 1941 he was appointed Commissioner for the Central Control of Questions Connected with the East European Region. In preparing the plans for the occupation, he had numerous conferences with Keitel, Raeder, Göring, Funk, Ribbentrop, and other high Reich authorities. In April and May 1941 he prepared several drafts of instructions concerning the setting up of the administration in the Occupied Eastern Territories. On 20 June 1941, two days before the attack on the U.S.S.R., he made a speech to his assistants about the problems and policies of occupation. Rosenberg attended Hitler's conference of 16 July 1941, in which policies of administration and occupation were discussed. On 17 July 1941, Hitler appointed Rosenberg Reich Minister for the Occupied Eastern Territories and publicly charged him with responsibility for civil administration.

War Crimes and Crimes against Humanity

Rosenberg is responsible for a system of organized plunder of both public and private property throughout the invaded countries of Europe. Acting under Hitler's orders of January 1940 to set up the "Hohe Schule," he organized and directed the "Einsatzstab Rosenberg," which plundered museums and libraries, confiscated art treasures and collections, and pillaged private houses. His own reports show the extent of the confiscations. In "Aktion-M" (Möbel), instituted in December 1941 at Rosenberg's suggestion, 69, 619 Jewish homes were plundered in the West, 38,000 of them in Paris alone, and it took 26,984 railroad cars to transport the confiscated furnishings to Germany. As of 14 July 1944, more than 21,903 art objects, including famous paintings and museum pieces, had been seized by the Einsatzstab in the West.

With his appointment as Reich Minister for the Occupied Eastern Territories on 17 July 1941, Rosenberg became the supreme authority for those areas. He helped to formulate the policies of Germanization, exploitation, forced labor, extermination of Jews and opponents of Nazi rule, and he set up the administration which carried them out. He took part in the conference of 16 July 1941, in which Hitler stated that they were faced with the task of "cutting up the giant cake according to our needs in order to be able: first, to

dominate it, second, to administer it, and third, to exploit it," and he indicated that ruthless action was contemplated. Rosenberg accepted his appointment on the following day.

Rosenberg had knowledge of the brutal treatment and terror to which the Eastern people were subjected. He directed that the Hague Rules of Land Warfare were not applicable in the Occupied Eastern Territories. He had knowledge of and took an active part in stripping the Eastern territories of raw materials and foodstuffs, which were sent to Germany. He stated that feeding the German people was first on the list of claims on the East, and that the Soviet people would suffer thereby. His directives provided for the segregation of Jews, ultimately in ghettos. His subordinates engaged in mass killings of Jews, and his civil administrators in the East considered that cleansing the Eastern Occupied Territories of Jews was necessary. In December 1941, Rosenberg made the suggestion to Hitler that in a case of shooting 100 hostages, Jews only be used. Rosenberg had knowledge of the deportation of laborers from the East, of the methods of "recruiting" and the transportation horrors, and of the treatment Eastern laborers received in the Reich. He gave his civil administrators quotas of laborers to be sent to the Reich, which had to be met by whatever means necessary. His signature of approval appears on the order of 14 June 1944, for the "Heu Aktion," the apprehension of 40,000 to 50,000 youths, aged 10-14, for shipment to the Reich.

Upon occasion Rosenberg objected to the excesses and atrocities committed by his subordinates, notably in the case of Koch, but these excesses continued and he stayed in office until the end.

Conclusion

The Tribunal finds that Rosenberg is guilty on all four Counts.

MR. BIDDLE:

FRANK

Frank is indicted under Counts One, Three, and Four. Frank joined the Nazi Party in 1927. He became a member of the Reichstag in 1930, the Bavarian State Minister of Justice in March 1933, and when this position was incorporated into the Reich Government in 1934, Reich Minister without Portfolio. He was made a Reichsleiter of the Nazi Party in charge of legal affairs in 1933, and in the same year President of the Academy of German Law. Frank was also given the honorary rank of Obergruppenführer in the SA. In 1942 Frank became involved in a temporary dispute with Himmler as to the type of legal system which should be in effect in Germany. During the same year he was dismissed as Reichsleiter of the Nazi Party and as President of the Academy of German Law.

Crimes against Peace

The evidence has not satisfied the Tribunal that Frank was sufficiently connected with the common plan to wage aggressive war to allow the Tribunal to convict him on Count One.

War Crimes and Crimes against Humanity

Frank was appointed Chief Civil Administration Officer for occupied Polish territory and, on 12 October 1939, was made Governor General of the occupied Polish territory. On 3 October 1939, he described the policy which he intended to put into effect by stating: "Poland shall be treated like a colony; the Poles will become the slaves of the Greater German World Empire." The evidence establishes that this occupation policy was based on the complete destruction of Poland as a national entity, and a ruthless exploitation of its human and economic resources for the German war effort. All opposition was crushed with the utmost harshness. A reign of terror was instituted, backed by summary police courts which ordered such actions as the public shootings of groups of 20 to 200 Poles and the widespread shooting of hostages. The concentration camp system was introduced in the Government General by the establishment of the notorious Treblinka and Maidanek camps. As early as 6 February 1940, Frank gave an indication of the extent of this reign of terror by his cynical comment to a newspaper reporter on Von Neurath's poster announcing the execution of the Czech students: "If I wished to order that one should hang up posters about every seven Poles shot, there would not be enough forests in Poland with which to make the paper for these posters." On 30 May 1940, Frank told a police conference that he was taking advantage of the offensive in the West, which diverted the attention of the world from Poland, to liquidate thousands of Poles who would be likely to resist German domination of Poland, including "the leading representatives of the Polish intelligentsia." Pursuant to these instructions the brutal AB Action was begun, under which the Security Police and SD carried out these exterminations which were only partially subjected to the restraints of legal procedure. On 2 October 1943, Frank issued a decree under which any non-German hindering German construction in the Government General was to be tried by summary courts of the Security Police and SD and sentenced to death.

The economic demands made on the Government General were far in excess of the needs of the army of occupation and were out of all proportion to the resources of the country. The food raised in Poland was shipped to Germany on such a wide scale that the rations of the population of the occupied territories were reduced to the starvation level, and epidemics were widespread. Some steps

were taken to provide for the feeding of the agricultural workers who were used to raise the crops, but the requirements of the rest of the population were disregarded. It is undoubtedly true, as argued by counsel for the Defense, that some suffering in the Government General was inevitable as a result of the ravages of war and the economic confusion resulting therefrom. But the suffering was increased by a planned policy of economic exploitation.

Frank introduced the deportation of slave laborers to Germany in the very early stages of his administration. On 25 January 1940, he indicated his intention of deporting a million laborers to Germany, suggesting on 10 May 1940 the use of police raids to meet this quota. On 18 August 1942, Frank reported that he had already supplied 800,000 workers for the Reich and expected to be able to supply 140,000 more before the end of the year.

The persecution of the Jews was immediately begun in the Government General. The area originally contained from 2,500,000 to 3,500,000 Jews. They were forced into ghettos, subjected to discriminatory laws, deprived of the food necessary to avoid starvation, and finally systematically and brutally exterminated. On 16 December 1941, Frank told the Cabinet of the Government General: "We must annihilate the Jews wherever we find them and wherever it is possible in order to maintain there the structure of the Reich as a whole." By 25 January 1944, Frank estimated that there were only 100,000 Jews left.

At the beginning of his testimony, Frank stated that he had a feeling of "terrible guilt" for the atrocities committed in the occupied territories. But his defense was largely devoted to an attempt to prove that he was not in fact responsible; that he ordered only the necessary pacification measures; that the excesses were due to the activities of the Police which were not under his control; and that he never even knew of the activities of the concentration camps. It has also been argued that the starvation was due to the aftermath of the war and policies carried out under the Four Year Plan; that the forced labor program was under the direction of Sauckel; and that the extermination of the Jews was by the Police and SS under direct orders from Himmler.

It is undoubtedly true that most of the criminal program charged against Frank was put into effect through the Police, that Frank had jurisdictional difficulties with Himmler over the control of the Police, and that Hitler resolved many of these disputes in favor of Himmler. It therefore may well be true that some of the crimes committed in the Government General were committed without the knowledge of Frank, and even occasionally despite his opposition. It may also be true that some of the criminal policies put into effect in the Government General did not originate with Frank but were

carried out pursuant to orders from Germany. But it is also true that Frank was a willing and knowing participant in the use of terrorism in Poland; in the economic exploitation of Poland in a way which led to the death by starvation of a large number of people; in the deportation to Germany as slave laborers of over a million Poles; and in a program involving the murder of at least 3 million Jews.

Conclusion

The Tribunal finds that Frank is not guilty on Count One but is guilty under Counts Three and Four.

M. DE VABRES:

FRICK

Frick is indicted on all four Counts. Recognized as the chief Nazi administrative specialist and bureaucrat, he was appointed Reich Minister of the Interior in Hitler's first cabinet. He retained this important position until August 1943, when he was appointed Reich Protector of Bohemia and Moravia. In connection with his duties at the center of all internal and domestic administration, he became the Prussian Minister of the Interior, Reich Director of Elections, General Plenipotentiary for the Administration of the Reich, and a member of the Reich Defense Council, the Ministerial Council for Defense of the Reich, and the "Three Man College." As the several countries incorporated into the Reich were overrun, he was placed at the head of the central offices for their incorporation.

Though Frick did not officially join the Nazi Party until 1925, he had previously allied himself with Hitler and the National Socialist cause during the Munich Putsch, while he was an official in the Munich Police Department. Elected to the Reichstag in 1924, he became a Reichsleiter as leader of the National Socialist faction in that body.

Crimes against Peace

An avid Nazi, Frick was largely responsible for bringing the German nation under the complete control of the NSDAP. After Hitler became Reich Chancellor, the new Minister of the Interior immediately began to incorporate local governments under the sovereignty of the Reich. The numerous laws he drafted, signed, and administered, abolished all opposition parties and prepared the way for the Gestapo and their concentration camps to extinguish all individual opposition. He was largely responsible for the legislation which suppressed the trade unions, the Church, the Jews. He performed this task with ruthless efficiency.

Before the date of the Austrian aggression Frick was concerned only with domestic administration within the Reich. The evidence does not show that he participated in any of the conferences at which Hitler outlined his aggressive intentions. Consequently the Tribunal takes the view that Frick was not a member of the common plan or conspiracy to wage aggressive war as defined in this Judgment.

Six months after the seizure of Austria, under the provisions of the Reich Defense Law of 4 September 1938, Frick became Plenipotentiary General for the Administration of the Reich. He was made responsible for war administration, except the military and economic, in the event of Hitler's proclaiming a state of defense. The Reich Ministries of Justice, Education, Religion, and the Office of Spatial Planning were made subordinate to him. Performing his allotted duties, Frick devised an administrative organization in accordance with wartime standards. According to his own statement, this was actually put into operation after Germany decided to adopt a policy of war.

Frick signed the law of 13 March 1938, which united Austria with the Reich, and he was made responsible for its accomplishment. In setting up German administration in Austria, he issued decrees which introduced German law, the Nuremberg Decrees, the Military Service Law, and he provided for police security by Himmler.

He also signed the laws incorporating into the Reich the Sudetenland, Memel, Danzig, the Eastern territories (West Prussia and Posen), and Eupen, Malmedy, and Moresnet. He was placed in charge of the actual incorporation and of the establishment of German administration over these territories. He signed the law establishing the Protectorate of Bohemia and Moravia.

As the head of the central offices for Bohemia and Moravia, the Government General, and Norway, he was charged with obtaining close co-operation between the German officials in these occupied countries and the supreme authorities of the Reich. He supplied German civil servants for the administrations in all occupied territories, advising Rosenberg as to their assignment in the Occupied Eastern Territories. He signed the laws appointing Terboven Reich Commissioner to Norway and Seyss-Inquart to Holland.

War Crimes and Crimes against Humanity

Always rabidly anti-Semitic, Frick drafted, signed, and administered many laws designed to eliminate Jews from German life and economy. His work formed the basis of the Nuremberg Decrees, and he was active in enforcing them. Responsible for prohibiting Jews from following various professions and for confiscating their

property, he signed a final decree in 1943, after the mass destruction of Jews in the East, which placed them "outside the law" and handed them over to the Gestapo. These laws paved the way for the "final solution," and were extended by Frick to the incorporated territories and to certain of the occupied territories. While he was Reich Protector of Bohemia and Moravia, thousands of Jews were transferred from the Terezin ghetto in Czechoslovakia to Auschwitz, where they were killed. He issued a decree providing for special penal laws against Jews and Poles in the Government General.

The Police officially fell under the jurisdiction of the Reich Minister of the Interior. But Frick actually exercised little control over Himmler and police matters. However, he signed the law appointing Himmler Chief of the German Police, as well as the decrees establishing Gestapo jurisdiction over concentration camps and regulating the execution of orders for protective custody. From the many complaints he received, and from the testimony of witnesses, the Tribunal concludes that he knew of atrocities committed in these camps. With knowledge of Himmler's methods, Frick signed decrees authorizing him to take necessary security measures in certain of the incorporated territories. What these "security measures" turned out to be has already been dealt with.

As the supreme Reich authority in Bohemia and Moravia, Frick bears general responsibility for the acts of oppression in that territory after 20 August 1943, such as terrorism of the population, slave labor, and the deportation of Jews to the concentration camps for extermination. It is true that Frick's duties as Reich Protector were considerably more limited than those of his predecessor, and that he had no legislative and limited personal executive authority in the Protectorate. Nevertheless, Frick knew full well what the Nazi policies of occupation were in Europe, particularly with respect to Jews, at that time, and by accepting the office of Reich Protector he assumed responsibility for carrying out those policies in Bohemia and Moravia.

German citizenship in the occupied countries as well as in the Reich came under his jurisdiction while he was Minister of the Interior. Having created a racial register of persons of German extraction, Frick conferred German citizenship on certain groups of citizens of foreign countries. He is responsible for Germanization in Austria, Sudetenland, Memel, Danzig, Eastern Territories (West Prussia and Posen), and in the territories of Eupen, Malmedy, and Moresnet. He forced on the citizens of these territories German law, German courts, German education, German police security, and compulsory military service.

During the war nursing homes, hospitals, and asylums in which euthanasia was practiced as described elsewhere in this Judgment,

came under Frick's jurisdiction. He had knowledge that insane, sick, and aged people, "useless eaters," were being systematically put to death. Complaints of these murders reached him, but he did nothing to stop them. A report of the Czechoslovak War Crimes Commission estimated that 275,000 mentally deficient and aged people, for whose welfare he was responsible, fell victim to it.

Conclusion

The Tribunal finds that Frick is not guilty on Count One. He is guilty on Counts Two, Three and Four.

THE PRESIDENT:

STREICHER

Streicher is indicted on Counts One and Four. One of the earliest members of the Nazi Party, joining in 1921, he took part in the Munich Putsch. From 1925 to 1940 he was Gauleiter of Franconia. Elected to the Reichstag in 1933, he was an honorary general in the SA. His persecution of the Jews was notorious. He was the publisher of *Der Stürmer,* an anti-Semitic weekly newspaper, from 1923 to 1945 and was its editor until 1933.

Crimes against Peace

Streicher was a staunch Nazi and supporter of Hitler's main policies. There is no evidence to show that he was ever within Hitler's inner circle of advisers; nor during his career was he closely connected with the formulation of the policies which led to war. He was never present, for example, at any of the important conferences when Hitler explained his decisions to his leaders. Although he was a Gauleiter there is no evidence to prove that he had knowledge of these policies. In the opinion of the Tribunal, the evidence fails to establish his connection with the conspiracy or common plan to wage aggressive war as that conspiracy has been elsewhere defined in this Judgment.

Crimes against Humanity

For his 25 years of speaking, writing, and preaching hatred of the Jews, Streicher was widely known as "Jew-Baiter Number One." In his speeches and articles, week after week, month after month, he infected the German mind with the virus of anti-Semitism and incited the German people to active persecution. Each issue of *Der Stürmer,* which reached a circulation of 600,000 in 1935, was filled with such articles, often lewd and disgusting.

Streicher had charge of the Jewish boycott of 1 April 1933. He advocated the Nuremberg Decrees of 1935. He was responsible for the demolition on 10 August 1938 of the synagogue in Nuremberg.

And on 10 November 1938, he spoke publicly in support of the Jewish pogrom which was taking place at that time.

But it was not only in Germany that this defendant advocated his doctrines. As early as 1938 he began to call for the annihilation of the Jewish race. 23 different articles of *Der Stürmer* between 1938 and 1941 were produced in evidence, in which extermination "root and branch" was preached. Typical of his teachings was a leading article in September 1938 which termed the Jew a germ and a pest, not a human being, but "a parasite, an enemy, an evil-doer, a disseminator of diseases who must be destroyed in the interest of mankind." Other articles urged that only when world Jewry had been annihilated would the Jewish problem have been solved, and predicted that 50 years hence the Jewish graves "will proclaim that this people of murderers and criminals has after all met its deserved fate." Streicher, in February 1940, published a letter from one of *Der Stürmer's* readers which compared Jews with swarms of locusts which must be exterminated completely. Such was the poison Streicher injected into the minds of thousands of Germans which caused them to follow the National Socialist policy of Jewish persecution and extermination. A leading article of *Der Stürmer,* in May 1939, shows clearly his aim:

> "A punitive expedition must come against the Jews in Russia. A punitive expedition which will provide the same fate for them that every murderer and criminal must expect. Death sentence and execution. The Jews in Russia must be killed. They must be exterminated root and branch."

As the war in the early stages proved successful in acquiring more and more territory for the Reich, Streicher even intensified his efforts to incite the Germans against the Jews. In the record are 26 articles from *Der Stürmer,* published between August 1941 and September 1944, 12 by Streicher's own hand, which demanded annihilation and extermination in unequivocal terms. He wrote and published on 25 December 1941:

> "If the danger of the reproduction of that curse of God in the Jewish blood is finally to come to an end, then there is only one way—the extermination of that people whose father is the devil."

And in February 1944 his own article stated:

> "Whoever does what a Jew does is a scoundrel, a criminal. And he who repeats and wishes to copy him deserves the same fate: annihilation, death."

With knowledge of the extermination of the Jews in the Occupied Eastern Territories, this defendant continued to write and publish his propaganda of death. Testifying in this Trial, he vehemently denied any knowledge of mass executions of Jews. But the

evidence makes it clear that he continually received current information on the progress of the "final solution." His press photographer was sent to visit the ghettos of the East in the spring of 1943, the time of the destruction of the Warsaw ghetto. The Jewish newspaper, *Israelitisches Wochenblatt,* which Streicher received and read, carried in each issue accounts of Jewish atrocities in the East, and gave figures on the number of Jews who had been deported and killed. For example, issues appearing in the summer and fall of 1942 reported the death of 72,729 Jews in Warsaw, 17,542 in Lodz, 18,000 in Croatia, 125,000 in Romania, 14,000 in Latvia, 85,000 in Yugoslavia, 700,000 in all of Poland. In November 1943 Streicher quoted verbatim an article from the *Israelitisches Wochenblatt* which stated that the Jews had virtually disappeared from Europe, and commented: "This is not a Jewish lie." In December 1942, referring to an article in the London *Times* about the atrocities aiming at extermination, Streicher said that Hitler had given warning that the second World War would lead to the destruction of Jewry. In January 1943 he wrote and published an article which said that Hitler's prophecy was being fulfilled, that world Jewry was being extirpated, and that it was wonderful to know that Hitler was freeing the world of its Jewish tormentors.

In the face of the evidence before the Tribunal it is idle for Streicher to suggest that the solution of the Jewish problem which he favored was strictly limited to the classification of Jews as aliens, and the passing of discriminatory legislation such as the Nuremberg Laws, supplemented if possible by international agreement on the creation of a Jewish state somewhere in the world, to which all Jews should emigrate.

Streicher's incitement to murder and extermination at the time when Jews in the East were being killed under the most horrible conditions clearly constitutes persecution on political and racial grounds in connection with War Crimes, as defined by the Charter, and constitutes a Crime against Humanity.

Conclusion

The Tribunal finds that Streicher is not guilty on Count One, but that he is guilty on Count Four.

GEN. NIKITCHENKO:

FUNK

Funk is indicted under all four Counts. Funk, who had previously been a financial journalist, joined the Nazi Party in 1931, and shortly thereafter became one of Hitler's personal economic advisers. On 30 January 1933, he was made Press Chief in the Reich

Government, and on 11 March 1933 became Under Secretary in the Ministry of Propaganda and shortly thereafter a leading figure in the various Nazi organizations which were used to control the press, films, music, and publishing houses. Funk took office as Minister of Economics and Plenipotentiary General for War Economy in early 1938, and as President of the Reichsbank in January 1939. He succeeded Schacht in all three of these positions. He was made a member of the Ministerial Council for the Defense of the Reich in August 1939, and a member of the Central Planning Board in September 1943.

Crimes against Peace

Funk became active in the economic field after the Nazi plans to wage aggressive war had been clearly defined. One of his representatives attended a conference on 14 October 1938, at which Göring announced a gigantic increase in armaments and instructed the Ministry of Economics to increase exports to obtain the necessary exchange. On 28 January 1939, one of Funk's subordinates sent a memorandum to the OKW on the use of prisoners of war to make up labor deficiencies which would arise in case of mobilization. On 30 May 1939, the Under Secretary of the Ministry of Economics attended a meeting at which detailed plans were made for the financing of the war.

On 25 August 1939, Funk wrote a letter to Hitler expressing his gratitude that he was able to participate in such world-shaking events; that his plans for the "financing of the war," for the control of wage and price conditions and for the strengthening of the Reichsbank had been completed; and that he had inconspicuously transferred into gold all foreign exchange resources available to Germany. On 14 October 1939, after the war had begun, he made a speech in which he stated that the economic and financial departments of Germany working under the Four Year Plan had been engaged in the secret economic preparation for war for over a year.

Funk participated in the economic planning which preceded the attack on the U.S.S.R. His deputy held daily conferences with Rosenberg on the economic problems which would arise in the occupation of Soviet territory. Funk himself participated in planning for the printing of rouble notes in Germany prior to the attack to serve as occupation currency in the U.S.S.R. After the attack he made a speech in which he described plans he had made for the economic exploitation of the "vast territories of the Soviet Union" which were to be used as a source of raw material for Europe.

Funk was not one of the leading figures in originating the Nazi plans for aggressive war. His activity in the economic sphere was under the supervision of Göring as Plenipotentiary of the Four Year Plan. He did, however, participate in the economic preparation for

certain of the aggressive wars, notably those against Poland and the Soviet Union, but his guilt can be adequately dealt with under Count Two of the Indictment.

War Crimes and Crimes against Humanity

In his capacity as Under Secretary in the Ministry of Propaganda and Vice-Chairman of the Reich Chamber of Culture, Funk had participated in the early Nazi program of economic discrimination against the Jews. On 12 November 1938, after the pogroms of November, he attended a meeting held under the chairmanship of Göring to discuss the solution of the Jewish problem and proposed a decree providing for the banning of Jews from all business activities, which Göring issued the same day under the authority of the Four Year Plan. Funk has testified that he was shocked at the outbreaks of 10 November, but on 15 November he made a speech describing these outbreaks as a "violent explosion of the disgust of the German people, because of a criminal Jewish attack against the German people," and saying that the elimination of the Jews from economic life followed logically their elimination from political life.

In 1942 Funk entered into an agreement with Himmler under which the Reichsbank was to receive certain gold and jewels and currency from the SS and instructed his subordinates, who were to work out the details, not to ask too many questions. As a result of this agreement the SS sent to the Reichsbank the personal belongings taken from the victims who had been exterminated in the concentration camps. The Reichsbank kept the coins and bank notes and sent the jewels, watches, and personal belongings to Berlin municipal pawn shops. The gold from the eyeglasses and gold teeth and fillings were stored in the Reichsbank vaults. Funk has protested that he did not know that the Reichsbank was receiving articles of this kind. The Tribunal is of the opinion that he either knew what was being received or was deliberately closing his eyes to what was being done.

As Minister of Economics and President of the Reichsbank, Funk participated in the economic exploitation of occupied territories. He was President of the Continental Oil Company which was charged with the exploitation of the oil resources of occupied territories in the East. He was responsible for the seizure of the gold reserves of the Czechoslovakian National Bank and for the liquidation of the Yugoslavian National Bank. On 6 June 1942, his deputy sent a letter to the OKW requesting that funds from the French occupation cost fund be made available for black market purchases. Funk's knowledge of German occupation policies is shown by his presence at the meeting of 8 August 1942, at which Göring addressed the

various German occupation chiefs, told them of the products required from their territories, and added: "It makes no difference to me in this connection if you say that your people will starve."

In the fall of 1943, Funk was a member of the Central Planning Board which determined the total number of laborers needed for German industry and required Sauckel to produce them, usually by deportation from occupied territories. Funk did not appear to be particularly interested in this aspect of the forced labor program and usually sent a deputy to attend the meetings, often SS General Ohlendorf, the former chief of the SD inside of Germany and the former commander of Einsatzgruppe D. But Funk was aware that the board of which he was a member was demanding the importation of slave laborers and allocating them to the various industries under its control.

As President of the Reichsbank, Funk was also indirectly involved in the utilization of concentration camp labor. Under his direction the Reichsbank set up a revolving fund of 12,000,000 Reichsmarks to the credit of the SS for the construction of factories to use concentration camp laborers.

In spite of the fact that he occupied important official positions, Funk was never a dominant figure in the various programs in which he participated. This is a mitigating fact of which the Tribunal takes notice.

Conclusion

The Tribunal finds that Funk is not guilty on Count One but is guilty under Counts Two, Three, and Four.

THE PRESIDENT: The Court will adjourn for 10 minutes.

[A recess was taken.]

MR. BIDDLE:

SCHACHT

Schacht is indicted under Counts One and Two of the Indictment. Schacht served as Commissioner of Currency and President of the Reichsbank from 1923 to 1930; was reappointed President of the bank on 17 March 1933; Minister of Economics in August 1934; and Plenipotentiary General for War Economy in May 1935. He resigned from these two positions in November 1937 and was appointed Minister without Portfolio. He was reappointed as President of the Reichsbank for a one-year term on 16 March 1937, and for a four-year term on 9 March 1938, but was dismissed on 20 January 1939. He was dismissed as Minister without Portfolio on 22 January 1943.

Crimes against Peace

Schacht was an active supporter of the Nazi Party before its accession to power on 30 January 1933 and supported the appointment of Hitler to the post of Chancellor. After that date he played an important role in the vigorous rearmament program which was adopted, using the facilities of the Reichsbank to the fullest extent in the German rearmament effort. The Reichsbank, in its traditional capacity as financial agent for the German Government, floated long-term Government loans, the proceeds of which were used for rearmament. He devised a system under which five-year notes, known as "mefo" bills, guaranteed by the Reichsbank and backed, in effect, by nothing more than its position as a bank of issue, were used to obtain large sums for rearmament from the short-term money market. As Minister of Economics and as Plenipotentiary General for the War Economy he was active in organizing the German economy for war. He made detailed plans for industrial mobilization and the co-ordination of the Army with industry in the event of war. He was particularly concerned with shortages of raw materials and started a scheme of stock-piling, and a system of exchange control designed to prevent Germany's weak foreign exchange position from hindering the acquisition abroad of raw materials needed for rearmament. On 3 May 1935, he sent a memorandum to Hitler stating that "the accomplishment of the armament program with speed and in quantity is the problem of German politics, that everything else therefore should be subordinated to this purpose."

Schacht, by April 1936, began to lose his influence as the central figure in the German rearmament effort when Göring was appointed co-ordinator for raw materials and foreign exchange. Göring advocated a greatly expanded program for the production of synthetic raw materials, which was opposed by Schacht on the ground that the resulting financial strain might involve inflation. The influence of Schacht suffered further when on 16 October[11]) 1936, Göring was appointed Plenipotentiary for the Four Year Plan with the task of putting "the entire economy in a state of readiness for war within 4 years." Schacht had opposed the announcement of this plan and the appointment of Göring to head it, and it is clear that Hitler's action represented a decision that Schacht's economic policies were too conservative for the drastic rearmament policy which Hitler wanted to put into effect.

After Göring's appointment, Schacht and Göring promptly became embroiled in a series of disputes. Although there was an element of personal controversy running through these disputes, Schacht disagreed with Göring on certain basic policy issues. Schacht, on financial grounds, advocated a retrenchment in the

rearmament program, opposed as uneconomical much of the proposed expansion of production facilities, particularly for synthetics, urged a drastic tightening on Government credit, and a cautious policy in dealing with Germany's foreign exchange reserves. As a result of this dispute and of a bitter argument in which Hitler accused Schacht of upsetting his plans by his financial methods, Schacht went on leave of absence from the Ministry of Economics on 5 September 1937, and resigned as Minister of Economics and as Plenipotentiary General for War Economy on 16 November 1937.

As President of the Reichsbank, Schacht was still involved in disputes. Throughout 1938, the Reichsbank continued to function as the financial agent for the German Government in floating long-term loans to finance armaments. But on 31 March 1938, Schacht discontinued the practice of floating short-term notes guaranteed by the Reichsbank for armament expenditures. At the end of 1938, in an attempt to regain control of fiscal policy through the Reichsbank, Schacht refused an urgent request of the Reichsminister of Finance for a special credit to pay the salaries of civil servants which were not covered by existing funds. On 2 January 1939, Schacht held a conference with Hitler at which he urged him to reduce expenditures for armaments. On 7 January 1939, Schacht submitted to Hitler a report signed by the Directors of the Reichsbank which urged a drastic curtailment of armament expenditures and a balanced budget as the only method of preventing inflation. On 19 January, Hitler dismissed Schacht as President of the Reichsbank. On 22 January 1943, Hitler dismissed Schacht as Reich Minister without Portfolio because of his "whole attitude during the present fateful fight of the German nation." On 23 July 1944, Schacht was arrested by the Gestapo and confined in a concentration camp until the end of the war.

It is clear that Schacht was a central figure in Germany's rearmament program, and the steps which he took, particularly in the early days of the Nazi regime, were responsible for Nazi Germany's rapid rise as a military power. But rearmament of itself is not criminal under the Charter. To be a Crime against Peace under Article 6 of the Charter it must be shown that Schacht carried out this rearmament as part of the Nazi plans to wage aggressive wars.

Schacht has contended that he participated in the rearmament program only because he wanted to build up a strong and independent Germany which would carry out a foreign policy which would command respect on an equal basis with other European countries; that when he discovered that the Nazis were rearming for aggressive purposes he attempted to slow down the speed of rearmament; and that after the dismissal of Von Fritsch and Von

Blomberg he participated in plans to get rid of Hitler, first by deposing him and later by assassination.

Schacht, as early as 1936, began to advocate a limitation of the rearmament program for financial reasons. Had the policies advocated by him been put into effect, Germany would not have been prepared for a general European war. Insistence on his policies led to his eventual dismissal from all positions of economic significance in Germany. On the other hand, Schacht, with his intimate knowledge of German finance, was in a peculiarly good position to understand the true significance of Hitler's frantic rearmament and to realize that the economic policy adopted was consistent only with war as its object.

Moreover Schacht continued to participate in German economic life and even, in a minor way, in some of the early Nazi aggressions. Prior to the occupation of Austria he set a rate of exchange between the mark and the schilling. After the occupation of Austria he arranged for the incorporation of the Austrian National Bank into the Reichsbank and made a violently pro-Nazi speech in which he stated that the Reichsbank would always be Nazi as long as he was connected with it, praised Hitler, defended the occupation of Austria, scoffed at objections to the way it was carried out, and ended with "to our Führer, a triple 'Sieg Heil'." He has not contended that this speech did not represent his state of mind at the time. After the occupation of the Sudetenland, he arranged for currency conversion and for the incorporation into the Reichsbank of local Czech banks of issue. On 29 November 1938, he made a speech in which he pointed with pride to his economic policy which had created the high degree of German armament, and added that this armament had made Germany's foreign policy possible.

Schacht was not involved in the planning of any of the specific wars of aggression charged in Count Two. His participation in the occupation of Austria and the Sudetenland (neither of which is charged as aggressive war) was on such a limited basis that it does not amount to participation in the common plan charged in Count One. He was clearly not one of the inner circle around Hitler which was most closely involved with this common plan. He was regarded by this group with undisguised hostility. The testimony of Speer shows that Schacht's arrest on 23 July 1944 was based as much on Hitler's enmity towards Schacht growing out of his attitude before the war as it was on suspicion of his complicity in the bomb plot. The case against Schacht therefore depends on the inference that Schacht did in fact know of the Nazi aggressive plans.

On this all-important question evidence has been given for the Prosecution, and a considerable volume of evidence for the Defense.

The Tribunal has considered the whole of this evidence with great care, and comes to the conclusion that this necessary inference has not been established beyond a reasonable doubt.

Conclusion

The Tribunal finds that Schacht is not guilty on this Indictment, and directs that he shall be discharged by the Marshal, when the Tribunal presently adjourns.

M. DE VABRES:

DÖNITZ

Dönitz is indicted on Counts One, Two, and Three. In 1935 he took command of the first U-Boat flotilla commissioned since 1918, became in 1936 commander of the submarine arm, was made Vice-Admiral in 1940, Admiral in 1942, and on 30 January 1943 Commander-in-Chief of the German Navy. On 1 May 1945 he became the Head of State, succeeding Hitler.

Crimes against Peace

Although Dönitz built and trained the German U-Boat arm, the evidence does not show he was privy to the conspiracy to wage aggressive wars or that he prepared and initiated such wars. He was a line officer performing strictly tactical duties. He was not present at the important conferences when plans for aggressive wars were announced, and there is no evidence he was informed about the decisions reached there. Dönitz did, however, wage aggressive war within the meaning of that word as used by the Charter. Submarine warfare which began immediately upon the outbreak of war, was fully co-ordinated with the other branches of the Wehrmacht. It is clear that his U-boats, few in number at the time, were fully prepared to wage war.

It is true that until his appointment in January 1943 as commander-in-chief he was not an "Oberbefehlshaber." But this statement underestimates the importance of Dönitz' position. He was no mere army or division commander. The U-Boat arm was the principal part of the German fleet and Dönitz was its leader. The high seas fleet made a few minor, if spectacular, raids during the early years of the war, but the real damage to the enemy was done almost exclusively by his submarines, as the millions of tons of allied and neutral shipping sunk will testify. Dönitz was solely in charge of this warfare. The Naval War Command reserved for itself only the decision as to the number of submarines in each area. In the invasion of Norway, for example, he made recommendations in October 1939 as to submarine bases, which he claims were no more

than a staff study, and in March 1940 he made out the operational orders for the supporting U-boats, as discussed elsewhere in this Judgment.

That his importance to the German war effort was so regarded is eloquently proved by Raeder's recommendation of Dönitz as his successor and his appointment by Hitler on 30 January 1943 as Commander-in-Chief of the Navy. Hitler too knew that submarine warfare was the essential part of Germany's naval warfare.

From January 1943, Dönitz was consulted almost continuously by Hitler. The evidence was that they conferred on naval problems about 120 times during the course of the war.

As late as April 1945 when he admits he knew the struggle was hopeless, Dönitz as its commander-in-chief urged the Navy to continue its fight. On 1 May 1945 he became the Head of State and as such ordered the Wehrmacht to continue its war in the East, until capitulation on 9 May 1945. Dönitz explained that his reason for these orders was to insure that the German civilian population might be evacuated and the Army might make an orderly retreat from the East.

In the view of the Tribunal, the evidence shows that Dönitz was active in waging aggressive war.

War Crimes

Dönitz is charged with waging unrestricted submarine warfare contrary to the Naval Protocol of 1936, to which Germany acceded, and which reaffirmed the rules of submarine warfare laid down in the London Naval Agreement of 1930.

The Prosecution has submitted that on 3 September 1939 the German U-Boat arm began to wage unrestricted submarine warfare upon all merchant ships, whether enemy or neutral, cynically disregarding the Protocol, and that a calculated effort was made throughout the war to disguise this practice by making hypocritical references to international law and supposed violations by the Allies.

Dönitz insists that at all times the Navy remained within the confines of international law and of the Protocol. He testified that when the war began, the guide to submarine warfare was the German Prize Ordinance, taken almost literally from the Protocol; that pursuant to the German view, he ordered submarines to attack all merchant ships in convoy and all that refused to stop or used their radio upon sighting a submarine. When his reports indicated that British merchant ships were being used to give information by wireless, were being armed and were attacking submarines on sight, he ordered his submarines on 17 October 1939 to attack all enemy

merchant ships without warning on the ground that resistance was to be expected. Orders already had been issued on 21 September 1939 to attack all ships, including neutrals, sailing at night without lights in the English Channel.

On 24 November 1939, the German Government issued a warning to neutral shipping that, owing to the frequent engagements taking place in the waters around the British Isles and the French coast between U-Boats and Allied merchant ships which were armed and had instructions to use those arms as well as to ram U-Boats, the safety of neutral ships in those waters could no longer be taken for granted. On 1 January 1940, the German U-Boat command, acting on the instructions of Hitler, ordered U-Boats to attack all Greek merchant ships in the zone surrounding the British Isles which was banned by the United States to its own ships and also merchant ships of every nationality in the limited area of the Bristol Channel. Five days later a further order was given to U-Boats "to make immediately unrestricted use of weapons against all ships" in an area of the North Sea, the limits of which were defined. Finally on 18 January 1940, U-Boats were authorized to sink, without warning, all ships "in those waters near the enemy coast in which the use of mines can be pretended." Exceptions were to be made in the cases of United States, Italian, Japanese, and Soviet ships.

Shortly after the outbreak of war the British Admiralty, in accordance with its *Handbook of Instructions* of 1938 to the merchant navy, armed its merchant vessels, in many cases convoyed them with armed escort, gave orders to send position reports upon sighting submarines, thus integrating merchant vessels into the warning network of naval intelligence. On 1 October 1939, the British Admiralty announced British merchant ships had been ordered to ram U-Boats if possible.

In the actual circumstances of this case, the Tribunal is not prepared to hold Dönitz guilty for his conduct of submarine warfare against British armed merchant ships.

However, the proclamation of operational zones and the sinking of neutral merchant vessels which enter those zones presents a different question. This practice was employed in the war of 1914-1918 by Germany and adopted in retaliation by Great Britain. The Washington Conference of 1922, the London Naval Agreement of 1930 and the Protocol of 1936 were entered into with full knowledge that such zones had been employed in that war. Yet the Protocol made no exception for operational zones. The order of Dönitz to sink neutral ships without warning when found within these zones was, in the opinion of the Tribunal, therefore a violation of the Protocol.

It is also asserted that the German U-Boat arm not only did not carry out the warning and rescue provisions of the Protocol but that Dönitz deliberately ordered the killing of survivors of shipwrecked vessels, whether enemy or neutral. The Prosecution has introduced much evidence surrounding two orders of Dönitz, War Order Number 154, issued in 1939, and the so-called *Laconia* order of 1942. The Defense argues that these orders and the evidence supporting them do not show such a policy and introduced much evidence to the contrary. The Tribunal is of the opinion that the evidence does not establish with the certainty required that Dönitz deliberately ordered the killing of shipwrecked survivors. The orders were undoubtedly ambiguous, and deserve the strongest censure.

The evidence further shows that the rescue provisions were not carried out and that the defendant ordered that they should not be carried out. The argument of the Defense is that the security of the submarine is, as the first rule of the sea, paramount to rescue and that the development of aircraft made rescue impossible. This may be so, but the Protocol is explicit. If the commander cannot rescue, then under its terms he cannot sink a merchant vessel and should allow it to pass unharmed before his periscope. These orders, then, prove Dönitz is guilty of a violation of the Protocol.

In view of all of the facts proved, and in particular of an order of the British Admiralty announced on 8 May 1940, according to which all vessels should be sunk at night in the Skagerrak, and the answer to interrogatories by Admiral Nimitz that unrestricted submarine warfare was carried on in the Pacific Ocean by the United States from the first day that nation entered the war, the sentence of Dönitz is not assessed on the ground of his breaches of the international law of submarine warfare.

Dönitz was also charged with responsibility for Hitler's Commando Order of 18 October 1942. Dönitz admitted he received and knew of the order when he was Flag Officer of U-boats, but disclaimed responsibility. He points out that the order by its express terms excluded men captured in naval warfare, that the Navy had no territorial commands on land, and that submarine commanders would never encounter Commandos.

In one instance, when he was Commander-in-Chief of the Navy, in 1943, the members of the crew of an Allied motor torpedo boat were captured by German naval forces. They were interrogated for intelligence purposes on behalf of the local admiral, and then turned over by his order to the SD and shot. Dönitz said that if they were captured by the Navy their execution was a violation of the Commando Order, that the execution was not announced in the Wehrmacht communiqué, and that he was never informed of the incident. He pointed out that the admiral in question was not in

his chain of command, but was subordinate to the Army general in command of the Norway occupation. But Dönitz permitted the order to remain in full force when he became commander-in-chief, and to that extent he is responsible.

Dönitz in a conference of 11 December 1944, said "12,000 concentration camp prisoners will be employed in the shipyards as additional labor."

At this time he had no jurisdiction over shipyard construction and claims that this was merely a suggestion at the meeting that the responsible officials do something about producing ships, that he took no steps to get these workers, since it was not a matter for his jurisdiction, and that he does not know whether they ever were procured. He admits he knew of concentration camps. A man in his position must necessarily have known that citizens of occupied countries in large numbers were confined in the concentration camps.

In 1945 Hitler requested the opinion of Jodl and Dönitz whether the Geneva Convention should be denounced. The notes of the meeting between the two military leaders on 20 February 1945 show that Dönitz expressed his view that the disadvantages of such an action outweighed the advantages. The summary of Dönitz' attitude shown in the notes taken by an officer, included the following sentence:

> "It would be better to carry out the measures considered necessary without warning, and at all costs[12]) to save face with the outer world."

The Prosecution insisted that "the measures" referred to meant that the Convention should not be denounced, but should be broken at will. The Defense explanation is that Hitler wanted to break the Convention for two reasons: to take away from German troops the protection of the Convention, thus preventing them from continuing to surrender in large groups to the British and Americans; and also to permit reprisals against Allied prisoners of war because of Allied bombing raids. Dönitz claims that what he meant by "measures" were disciplinary measures against German troops to prevent them from surrendering and had no reference to measures against the Allies; that this was merely a suggestion, and that in any event no such measures were ever taken, either against Allies or Germans. The Tribunal, however, does not believe this explanation. The Geneva Convention was not, however, denounced by Germany. The Defense has introduced several affidavits to prove that British naval prisoners of war in camps under Dönitz' jurisdiction were treated strictly according to the Convention, and the Tribunal takes this fact into consideration and regards it as a mitigating circumstance.

Conclusion

The Tribunal finds Dönitz is not guilty on Count One of the Indictment, and is guilty on Counts Two and Three.

THE PRESIDENT:

RAEDER

Raeder is indicted on Counts One, Two, and Three. In 1928 he became Chief of Naval Command and in 1935 Oberbefehlshaber der Kriegsmarine (OKM); in 1939 Hitler made him Grossadmiral. He was a member of the Reich Defense Council. On 30 January 1943, Dönitz replaced him at his own request, and he became Admiral Inspector of the Navy, a nominal title.

Crimes against Peace

In the 15 years he commanded it, Raeder built and directed the German Navy; he accepts full responsibility until retirement in 1943. He admits the Navy violated the Versailles Treaty, insisting it was "a matter of honor for every man" to do so, and alleges that the violations were for the most part minor, and Germany built less than her allowable strength. These violations, as well as those of the Anglo-German Naval Agreement of 1935, have already been discussed elsewhere in this Judgment.

Raeder received the directive of 24 June 1937 from Von Blomberg requiring special preparations for war against Austria. He was one of the five leaders present at the Hossbach conference of 5 November 1937. He claims Hitler merely wished by this conference to spur the Army to faster rearmament, insists he believed the questions of Austria and Czechoslovakia would be settled peacefully, as they were, and points to the new naval treaty with England which had just been signed. He received no orders to speed construction of U-Boats, indicating that Hitler was not planning war.

Raeder received directives on "Fall Grün" and the directives on "Fall Weiss" beginning with that of 3 April 1939; the latter directed the Navy to support the Army by intervention from the sea. He was also one of the few chief leaders present at the meeting of 23 May 1939. He attended the Obersalzberg briefing of 22 August 1939.

The conception of the invasion of Norway first arose in the mind of Raeder and not that of Hitler. Despite Hitler's desire, as shown by his directive of October 1939, to keep Scandinavia neutral, the Navy examined the advantages of naval bases there as early as October. Admiral Carls originally suggested to Raeder the desirable aspects of bases in Norway. A questionnaire, dated 3 October 1939, which sought comments on the desirability of such bases, was

circulated within SKL. On 10 October Raeder discussed the matter with Hitler; his war diary entry for that day says Hitler intended "to give the matter consideration." A few months later Hitler talked to Raeder, Quisling, Keitel, and Jodl; OKW began its planning and the Naval War Staff worked with OKW staff officers. Raeder received Keitel's directive for Norway on 27 January 1940 and the subsequent directive of 1 March, signed by Hitler.

Raeder defends his actions on the ground it was a move to forestall the British. It is not necessary again to discuss this defense, which has heretofore been treated in some detail, concluding that Germany's invasion of Norway and Denmark was aggressive war. In a letter to the Navy, Raeder said: "The operations of the Navy in the occupation of Norway will for all time remain the great contribution of the Navy to this war."

Raeder received the directives, including the innumerable postponements, for the attack in the West. In a meeting of 18 March 1941 with Hitler he urged the occupation of all Greece. He claims this was only after the British had landed and Hitler had ordered the attack, and points out the Navy had no interest in Greece. He received Hitler's directive on Yugoslavia.

Raeder endeavored to dissuade Hitler from embarking upon the invasion of the U.S.S.R. In September 1940 he urged on Hitler an aggressive Mediterranean policy as an alternative to an attack on Russia. On 14 November 1940 he urged the war against England "as our main enemy" and that submarine and naval air force construction be continued. He voiced "serious objections against the Russian campaign before the defeat of England," according to notes of the German Naval War Staff. He claims his objections were based on the violation of the non-aggression pact as well as strategy. But once the decision had been made, he gave permission 6 days before the invasion of the Soviet Union to attack Russian submarines in the Baltic Sea within a specified warning area and defends this action because these submarines were "snooping" on German activities.

It is clear from this evidence that Raeder participated in the planning and waging of aggressive war.

War Crimes

Raeder is charged with war crimes on the high seas. The *Athenia*, an unarmed British passenger liner, was sunk on 3 September 1939, while outward bound to America. The Germans 2 months later charged that Mr. Churchill deliberately sank the *Athenia* to encourage American hostility to Germany. In fact, it was sunk by the German U-Boat *U-30*. Raeder claims that an inexperienced

U-Boat commander sank it in mistake for an armed merchant cruiser, that this was not known until the *U-30* returned several weeks after the German denial and that Hitler then directed the Navy and Foreign Office to continue denying it. Raeder denied knowledge of the propaganda campaign attacking Mr. Churchill.

The most serious charge against Raeder is that he carried out unrestricted submarine warfare, including sinking of unarmed merchant ships, of neutrals, non-rescue and machine-gunning of survivors, contrary to the London Protocol of 1936. The Tribunal makes the same finding on Raeder on this charge as it did as to Dönitz, which has already been announced, up until 30 January 1943 when Raeder retired.

The Commando Order of 18 October 1942 which expressly did not apply to naval warfare was transmitted by the Naval War Staff to the lower naval commanders with the direction it should be distributed orally by flotilla leaders and section commanders to their subordinates. Two Commandos were put to death by the Navy, and not by the SD, at Bordeaux on 10 December 1942. The comment of the Naval War Staff was that this was "in accordance with the Führer's special order, but is nevertheless something new in international law, since the soldiers were in uniform." Raeder admits he passed the order down through the chain of command and he did not object to Hitler.

Conclusion

The Tribunal finds that Raeder is guilty on Counts One, Two and Three.

GEN. NIKITCHENKO:

VON SCHIRACH

Von Schirach is indicted under Counts One and Four. He joined the Nazi Party and the SA in 1925. In 1929 he became the Leader of the National Socialist Students' Union. In 1931 he was made Reich Youth Leader of the Nazi Party with control over all Nazi youth organizations including the Hitler Jugend. In 1933, after the Nazis had obtained control of the Government, Von Schirach was made Leader of Youth in the German Reich, originally a position within the Ministry of the Interior, but, after 1 December 1936, an office in the Reich Cabinet. In 1940, Von Schirach resigned as head of the Hitler Jugend and Leader of Youth in the German Reich, but retained his position as Reichsleiter with control over Youth Education. In 1940 he was appointed Gauleiter of Vienna, Reich Governor of Vienna, and Reich Defense Commissioner for that territory.

Crimes against Peace

After the Nazis had come to power Von Schirach, utilizing both physical violence and official pressure, either drove out of existence or took over all youth groups which competed with the Hitler Jugend. A Hitler decree of 1 December 1936 incorporated all German youth within the Hitler Jugend. By the time formal conscription was introduced in 1940, 97 percent of those eligible were already members.

Von Schirach used the Hitler Jugend to educate German youth "in the spirit of National Socialism" and subjected them to an intensive program of Nazi propaganda. He established the Hitler Jugend as a source of replacements for the Nazi Party formations. In October 1938 he entered into an arrangement with Himmler under which members of the Hitler Jugend who met SS standards would be considered as the primary source of replacements for the SS.

Von Schirach also used the Hitler Jugend for premilitary training. Special units were set up whose primary purpose was training specialists for the various branches of the service. On 11 August 1939, he entered into an agreement with Keitel under which the Hitler Jugend agreed to carry out its premilitary activities under standards laid down by the Wehrmacht, and the Wehrmacht agreed to train 30,000 Hitler Jugend instructors each year. The Hitler Jugend placed particular emphasis on the military spirit, and its training program stressed the importance of return of the colonies, the necessity for Lebensraum, and the noble destiny of German youth to die for Hitler.

Despite the warlike nature of the activities of the Hitler Jugend, however, it does not appear that Von Schirach was involved in the development of Hitler's plan for territorial expansion by means of aggressive war, or that he participated in the planning or preparation of any of the wars of aggression.

Crimes against Humanity

In July 1940, Von Schirach was appointed Gauleiter of Vienna. At the same time he was appointed Reich Governor for Vienna and Reich Defense Commissioner, originally for Military District 17, including the Gaue of Vienna, Upper Danube, and Lower Danube and, after 17 November 1942, for the Gau of Vienna alone. As Reich Defense Commissioner, he had control of the civilian war economy. As Reich Governor he was head of the municipal administration of the City of Vienna and, under the supervision of the Minister of the Interior, was in charge of the governmental administration of the Reich in Vienna.

Von Schirach is not charged with the commission of War Crimes in Vienna, only with the commission of Crimes against Humanity.

As has already been seen, Austria was occupied pursuant to a common plan of aggression. Its occupation is, therefore, a "crime within the jurisdiction of the Tribunal," as that term is used in Article 6(c) of the Charter. As a result, "murder, extermination, enslavement, deportation, and other inhumane acts" and "persecutions on political, racial, or religious grounds" in connection with this occupation constitute a Crime against Humanity under that Article.

As Gauleiter of Vienna, Von Schirach came under the Sauckel decree dated 6 April 1942, making the Gauleiter Sauckel's plenipotentiaries for manpower with authority to supervise the utilization and treatment of manpower within their Gaue. Sauckel's directives provided that the forced laborers were to be fed, sheltered, and treated so as to exploit them to the highest possible degree at the lowest possible expense.

When Von Schirach became Gauleiter of Vienna the deportation of the Jews had already been begun, and only 60,000 out of Vienna's original 190,000 Jews remained. On 2 October 1940, he attended a conference at Hitler's office and told Frank that he had 50,000 Jews in Vienna which the Government General would have to take over from him. On 3 December 1940, Von Schirach received a letter from Lammers stating that after the receipt of the reports made by Von Schirach, Hitler had decided to deport the 60,000 Jews still remaining in Vienna to the Government General because of the housing shortage in Vienna. The deportation of the Jews from Vienna was then begun and continued until the early fall of 1942. On 15 September 1942, Von Schirach made a speech in which he defended his action in having driven "tens of thousands upon tens of thousands of Jews into the ghetto of the East" as "contributing to European culture."

While the Jews were being deported from Vienna, reports, addressed to him in his official capacity, were received in Von Schirach's office from the office of the Chief of the Security Police and SD, which contained a description of the activities of Einsatzgruppen in exterminating Jews. Many of these reports were initialed by one of Von Schirach's principal deputies. On 30 June 1944, Von Schirach's office also received a letter from Kaltenbrunner informing him that a shipment of 12,000 Jews was on its way to Vienna for essential war work and that all those who were incapable of work would have to be kept in readiness for "special action."

The Tribunal finds that Von Schirach, while he did not originate the policy of deporting Jews from Vienna, participated in this deportation after he had become Gauleiter of Vienna. He knew that the best the Jews could hope for was a miserable existence in the

ghettos of the East. Bulletins describing the Jewish extermination were in his office.

While Gauleiter of Vienna, Von Schirach continued to function as Reichsleiter for Youth Education and in this capacity he was informed of the Hitler Jugend's participation in the plan put into effect in the fall of 1944 under which 50,000 young people between the ages of 10 and 20 were evacuated into Germany from areas recaptured by the Soviet forces and used as apprentices in German industry and as auxiliaries in units of the German Armed Forces. In the summer of 1942, Von Schirach telegraphed Bormann urging that a bombing attack on an English cultural town be carried out in retaliation for the assassination of Heydrich which, he claimed, had been planned by the British.

Conclusion

The Tribunal finds that Von Schirach is not guilty on Count One. He is guilty under Count Four.

MR. BIDDLE:

SAUCKEL

Sauckel is indicted under all four Counts. Sauckel joined the Nazi Party in, 1923, and became Gauleiter of Thuringia in 1927. He was a member of the Thuringian legislature from 1927 to 1933, was appointed Reichsstatthalter for Thuringia in 1932, and Thuringian Minister of the Interior and head of the Thuringian State Ministry in May 1933. He became a member of the Reichstag in 1933. He held the formal rank of Obergruppenführer in both the SA and the SS.

Crimes against Peace

The evidence has not satisfied the Tribunal that Sauckel was sufficiently connected with the common plan to wage aggressive war or sufficiently involved in the planning or waging of the aggressive wars to allow the Tribunal to convict him on Counts One or Two.

War Crimes and Crimes against Humanity

On 21 March 1942, Hitler appointed Sauckel Plenipotentiary General for the Utilization of Labor, with authority to put under uniform control "the utilization of all available manpower, including that of workers recruited abroad and of prisoners of war." Sauckel was instructed to operate within the fabric of the Four Year Plan, and on 27 March 1942, Göring issued a decree as Delegate for the Four Year Plan transferring his manpower sections to Sauckel,

On 30 September 1942, Hitler gave Sauckel authority to appoint commissioners in the various occupied territories and "to take all necessary measures for the enforcement" of the decree of 21 March 1942.

Under the authority which he obtained by these decrees, Sauckel set up a program for the mobilization of the labor resources available to the Reich. One of the important parts of this mobilization was the systematic exploitation, by force, of the labor resources of the occupied territories. Shortly after Sauckel had taken office, he had the governing authorities in the various occupied territories issue decrees establishing compulsory labor service in Germany. Under the authority of these decrees Sauckel's commissioners, backed up by the police authorities of the occupied territories, obtained and sent to Germany the laborers which were necessary to fill the quotas given them by Sauckel. He described so-called "voluntary" recruiting by "a whole batch of male and female agents just as was done in the olden times for shanghaiing." That real voluntary recruiting was the exception rather than the rule is shown by Sauckel's statement on 1 March 1944, that "out of five million foreign workers who arrived in Germany not even 200,000 came voluntarily." Although he now claims that the statement is not true, the circumstances under which it was made, as well as the evidence presented before the Tribunal, leave no doubt that it was substantially accurate.

The manner in which the unfortunate slave laborers were collected and transported to Germany, and what happened to them after they arrived, has already been described. Sauckel argues that he is not responsible for these excesses in the administration of the program. He says that the total number of workers to be obtained was set by the demands from agriculture and from industry; that obtaining the workers was the responsibility of the occupation authorities, transporting them to Germany that of the German railways, and taking care of them in Germany that of the Ministries of Labor and Agriculture, the German Labor Front, and the various industries involved. He testifies that insofar as he had any authority he was constantly urging humane treatment.

There is no doubt, however, that Sauckel had over-all responsibility for the slave labor program. At the time of the events in question he did not fail to assert control over the fields which he now claims were the sole responsibility of others. His regulations provided that his commissioners should have authority for obtaining labor, and he was constantly in the field supervising the steps which were being taken. He was aware of ruthless methods being taken to obtain laborers and vigorously supported them on the ground that they were necessary to fill the quotas.

Sauckel's regulations also provided that he had responsibility for transporting the laborers to Germany, allocating them to employers and taking care of them, and that the other agencies involved in these processes were subordinate to him. He was informed of the bad conditions which existed. It does not appear that he advocated brutality for its own sake, or was an advocate of any program such as Himmler's plan for extermination through work. His attitude was thus expressed in a regulation:

> "All the men must be fed, sheltered, and treated in such a way as to exploit them to the highest possible extent at the lowest conceivable degree of expenditure."

The evidence shows that Sauckel was in charge of a program which involved deportation for slave labor of more than 5,000,000 human beings, many of them under terrible conditions of cruelty and suffering.

Conclusion

The Tribunal finds that Sauckel is not guilty on Counts One and Two. He is guilty under Counts Three and Four.

M. DE VABRES:

JODL

Jodl is indicted on all four Counts. From 1935 to 1938 he was Chief of the National Defense Section in the High Command. After a year in command of troops, in August 1939 he returned to become Chief of the Operations Staff of the High Command of the Armed Forces. Although his immediate superior was Defendant Keitel, he reported directly to Hitler on operational matters. In the strict military sense, Jodl was the actual planner of the war and responsible in large measure for the strategy and conduct of operations.

Jodl defends himself on the ground he was a soldier sworn to obedience, and not a politician; and that his staff and planning work left him no time for other matters. He said that when he signed or initialed orders, memoranda, and letters, he did so for Hitler and often in the absence of Keitel. Though he claims that as a soldier he had to obey Hitler, he says that he often tried to obstruct certain measures by delay, which occasionally proved successful as when he resisted Hitler's demand that a directive be issued to lynch Allied "terror fliers."

Crimes against Peace

Entries in Jodl's diary of 13 and 14 February 1938 show Hitler instructed both him and Keitel to keep up military pressure against Austria, begun at the Schuschnigg conference, by simulating

military measures, and that these achieved their purpose. When Hitler decided "not to tolerate" Schuschnigg's plebiscite, Jodl brought to the conference the "old draft," the existing staff plan. His diary for 10 March shows Hitler then ordered the preparation of "Case Otto," and the directive was initialed by Jodl. Jodl issued supplementary instructions on 11 March, and initialed Hitler's order for the invasion on the same date.

In planning the attack on Czechoslovakia, Jodl was very active, according to the Schmundt notes. He initialed Items 14, 17, 24, 36, and 37 in the notes. Jodl admits he agreed with OKH that the "incident" to provide German intervention must occur at the latest by 1400 hours on X-1 Day, the day before the attack, and said it must occur at a fixed time in good flying weather. Jodl conferred with the propaganda experts on "imminent common tasks" such as German violations of international law, exploitation of them by the enemy, and refutations by the Germans, which "task" Jodl considered "particularly important."

After Munich, Jodl wrote:

> "Czechoslovakia as a power is out.... The genius of the Führer and his determination not to shun even a world war have again won the victory without the use of force. The hope remains that the incredulous, the weak, and the doubtful people have been converted and will remain that way."

Shortly after the Sudeten occupation, Jodl went to a post command and did not become Chief of the Operations Staff in OKW until the end of August 1939.

Jodl discussed the Norway invasion with Hitler, Keitel, and Raeder on 12 December 1939; his diary is replete with later entries on his activities in preparing this attack. Jodl explains his comment that Hitler was still looking for an "excuse" to move meant that he was waiting for reliable intelligence on the British plans, and defends the invasion as a necessary move to forestall them. His testimony shows that from October 1939 Hitler planned to attack the West through Belgium, but was doubtful about invading Holland until the middle of November. On 8 February[13]) 1940, Jodl, his deputy Warlimont, and Jeschonnek, the air forces planner, discussed among themselves the "new idea" of attacking Norway, Denmark, and Holland, but guaranteeing the neutrality of Belgium. Many of the 17 orders postponing the attack in the West for various reasons, including weather conditions, until May 1940, were signed by Jodl.

He was active in the planning against Greece and Yugoslavia. The Hitler order of 11 January 1941 to intervene in Albania was initialed by Jodl. On 20 January, 4 months before the attack, Hitler told a conference of German and Italian generals in Jodl's presence

that German troop concentrations in Romania were to be used against Greece. Jodl was present on 18 March when Hitler told Raeder all Greece must be occupied before any settlement could be reached. On 27 March, when Hitler told the German High Command that the destruction of Yugoslavia should be accomplished with "unmerciful harshness," and the decision was taken to bomb Belgrade without a declaration of war, Jodl was also there.

Jodl testified that Hitler feared an attack by Russia and so attacked first. This preparation began almost a year before the invasion. Jodl told Warlimont as early as 29 July 1940 to prepare the plans since Hitler had decided to attack; and Hitler later told Warlimont he had planned to attack in August 1940 but postponed it for military reasons. He initialed Hitler's directive of 12 November 1940 that preparations verbally ordered should be continued and also initialed "Case Barbarossa" on 18 December. On 3 February 1941, Hitler, Jodl, and Keitel discussed the invasion, and he was present on 14 June when final reports on "Case Barbarossa" were made.

War Crimes and Crimes against Humanity

On 18 October 1942 Hitler issued the Commando Order, and a day later a supplementary explanation to commanding officers only. The covering memorandum was signed by Jodl. Early drafts of the order were made by Jodl's staff, with his knowledge. Jodl testified he was strongly opposed on moral and legal grounds but could not refuse to pass it on. He insists he tried to mitigate its harshness in practice by not informing Hitler when it was not carried out. He initialed the OKW memorandum of 25 June 1944 reaffirming the order after the Normandy landings.

A plan to eliminate Soviet commissars was in the directive for "Case Barbarossa." The decision whether they should be killed without trial was to be made by an officer. A draft contains Jodl's handwriting suggesting this should be handled as retaliation, and he testified this was his attempt to get around it.

When in 1945 Hitler considered denouncing the Geneva Convention, Jodl argued the disadvantages outweighed the advantages. On 21 February he told Hitler adherence to the Convention would not interfere with the conduct of the war, giving as an example the sinking of a British hospital ship as a reprisal and calling it a mistake. He said he did so because it was the only attitude Hitler would consider, that moral or legal arguments had no effect, and argues he thus prevented Hitler from denouncing the Convention.

There is little evidence that Jodl was actively connected with the slave labor program, and he must have concentrated on his strategic planning function. But in his speech of 7 November 1943

to the Gauleiter he said it was necessary to act "with remorseless vigor and resolution" in Denmark, France, and the Low Countries to compel work on the Atlantic Wall.

By teletype of 28 October 1944, Jodl ordered the evacuation of all persons in northern Norway and the burning of their houses so they could not help the Russians. Jodl says he was against this, but Hitler ordered it and it was not fully carried out. A document of the Norwegian Government says such an evacuation did take place in northern Norway and 30,000 houses were damaged. On 7 October 1941, Jodl signed an order that Hitler would not accept an offer of surrender of Leningrad or Moscow, but on the contrary he insisted that they be completely destroyed. He says this was done because the Germans were afraid those cities would be mined by the Russians as was Kiev. No surrender was ever offered.

His defense, in brief, is the doctrine of "superior orders," prohibited by Article 8 of the Charter as a defense. There is nothing in mitigation. Participation in such crimes as these has never been required of any soldier and he cannot now shield himself behind a mythical requirement of soldierly obedience at all costs as his excuse for commission of these crimes.

Conclusion

The Tribunal finds that Jodl is guilty on all four Counts.

THE PRESIDENT:

VON PAPEN

Von Papen is indicted under Counts One and Two. He was appointed Chancellor of the Reich on 1 June 1932, and was succeeded by Von Schleicher on 2 December 1932. He was made Vice Chancellor in the Hitler Cabinet on 30 January 1933, and on 13 November 1933, Plenipotentiary for the Saar. On 26 July 1934, he was appointed Minister to Vienna, and was recalled on 4 February 1938. On 29 April 1939, he was appointed Ambassador to Turkey. He returned to Germany when Turkey broke off diplomatic relations with Germany in August 1944.

Crimes against Peace

Von Papen was active in 1932 and 1933 in helping Hitler to form the Coalition Cabinet and aided in his appointment as Chancellor on 30 January 1933. As Vice Chancellor in that Cabinet he participated in the Nazi consolidation of control in 1933. On 16 June 1934, however, Von Papen made a speech at Marburg which contained a denunciation of the Nazi attempts to suppress the free

press and the Church, of the existence of a reign of terror, and of "150 percent Nazis" who were mistaking "brutality for vitality." On 30 June 1934, in the wave of violence which accompanied the so-called Röhm Purge, Von Papen was taken into custody by the SS, his office force was arrested, and two of his associates, including the man who had helped him work on the Marburg speech, were murdered. Von Papen was released on 3 July 1934.

Notwithstanding the murder of his associates, Von Papen accepted the position of Minister to Austria on 26 July 1934, the day after Dollfuss had been assassinated. His appointment was announced in a letter from Hitler which instructed him to direct relations between the two countries "into normal and friendly channels" and assured him of Hitler's "complete and unlimited confidence." As Minister to Austria, Von Papen was active in trying to strengthen the position of the Nazi Party in Austria for the purpose of bringing about the Anschluss. In early 1935 he attended a meeting in Berlin at which the policy was laid down to avoid everything which would give the appearance of German intervention in the internal affairs of Austria. Yet he arranged for 200,000 marks a month to be transmitted to "the persecuted National Socialist sufferers in Austria." On 17 May 1935, he reported to Hitler the results of a conference with Captain Leopold, the leader of the Austrian Nazis, and urged Hitler to make a statement recognizing the national independence of Austria, and predicting that the result might be to help the formation of a coalition between Schuschnigg's Christian Socialists and the Austrian Nazis against Starhemberg. On 27 July 1935, Von Papen reported to Hitler that the union of Austria and Germany could not be brought about by external pressure but only by the strength of the National Socialist movement. He urged that the Austrian Nazi Party change its character as a centralized Reich German Party and become a rallying point for all national Germans.

Von Papen was involved in occasional Nazi political demonstrations, supported Nazi propaganda activities, and submitted detailed reports on the activities of the Nazi Party, and routine reports relating to Austrian military defenses. His Austrian policy resulted in the agreement of 11 July 1936, which nominally restored relations between Germany and Austria to "normal and friendly form," but which had a secret supplement providing for an amnesty for Austrian Nazis, the lifting of censorship on Nazi papers, the resumption of political activities by Nazis, and the appointment of men friendly to the Nazis in the Schuschnigg Cabinet.

After the signing of this agreement Von Papen offered to resign but his resignation was not accepted. Thereafter he proceeded to bring continued pressure on the Austrian Government to bring

Nazis into the Schuschnigg Cabinet and to get them important positions in the Fatherland Front, Austria's single legal party. On 1 September 1936, Von Papen wrote Hitler advising him that anti-Nazis in the Austrian Ministry of Security were holding up the infiltration of the Nazis into the Austrian Government and recommended bringing "slowly intensified pressure directed at changing the regime."

On 4 February 1938, Von Papen was notified of his recall as Minister to Austria, at the same time that Von Fritsch, Von Blomberg, and Von Neurath were removed from their positions. He informed Hitler that he regretted his recall because he had been trying since November 1937 to induce Schuschnigg to hold a conference with Hitler, and Schuschnigg had indicated his willingness to do so. Acting under Hitler's instructions, Von Papen then returned to Austria and arranged the conference which was held at Berchtesgaden on 12 February 1938. Von Papen accompanied Schuschnigg to that conference, and at its conclusion advised Schuschnigg to comply with Hitler's demands. On 10 March 1938, Hitler ordered Von Papen to return to Berlin. Von Papen was in the Chancellery on 11 March when the occupation of Austria was ordered. No evidence has been offered showing that Von Papen was in favor of the decision to occupy Austria by force, and he has testified that he urged Hitler not to take this step.

After the annexation of Austria Von Papen retired into private life and there is no evidence that he took any part in politics. He accepted the position of Ambassador to Turkey in April 1939 but no evidence has been offered concerning his activities in that position implicating him in crimes.

The evidence leaves no doubt that Von Papen's primary purpose as Minister to Austria was to undermine the Schuschnigg regime and strengthen the Austrian Nazis for the purpose of bringing about the Anschluss. To carry through this plan he engaged in both intrigue and bullying. But the Charter does not make criminal such offenses against political morality, however bad these may be. Under the Charter Von Papen can be held guilty only if he was a party to the planning of aggressive war. There is no evidence that he was a party to the plans under which the occupation of Austria was a step in the direction of further aggressive action, or even that he participated in plans to occupy Austria by aggressive war if necessary. But it is not established beyond a reasonable doubt that this was the purpose of his activity, and therefore the Tribunal cannot hold that he was a party to the common plan charged in Count One or participated in the planning of the aggressive wars charged under Count Two.

Conclusion

The Tribunal finds that Von Papen is not guilty under this Indictment, and directs that he shall be discharged by the Marshal, when the Tribunal presently adjourns.

MAJOR GENERAL NIKITCHENKO:

SEYSS-INQUART

Seyss-Inquart is indicted under all four Counts. Seyss-Inquart, an Austrian attorney, was appointed State Councillor in Austria in May 1937 as a result of German pressure. He had been associated with the Austrian Nazi Party since 1931, but had often had difficulties with that party and did not actually join the Nazi Party until 13 March 1938. He was appointed Austrian Minister of Security and Interior with control over the police pursuant to one of the conditions which Hitler had imposed on Schuschnigg in the Berchtesgaden conference of 12 February 1938.

Activities in Austria

Seyss-Inquart participated in the last stages of the Nazi intrigue which preceded the German occupation of Austria and was made Chancellor of Austria as a result of German threats of invasion.

On 12 March 1938, Seyss-Inquart met Hitler at Linz and made a speech welcoming the German forces and advocating the reunion of Germany and Austria. On 13 March, he obtained the passage of a law providing that Austria should become a province of Germany and succeeded Miklas as President of Austria when Miklas resigned rather than sign the law. Seyss-Inquart's title was changed to Reich Governor of Austria on 15 March 1938, and on the same day he was given the title of a general in the SS. He was made a Reich Minister without Portfolio on 1 May 1939.

On 11 March 1939, he visited the Slovakian Cabinet in Bratislava and induced them to declare their independence in a way which fitted in closely with Hitler's offensive against the independence of Czechoslovakia.

As Reich Governor of Austria, Seyss-Inquart instituted a program of confiscating Jewish property. Under his regime Jews were forced to emigrate, were sent to concentration camps, and were subject to pogroms. At the end of his regime he co-operated with the Security Police and SD in the deportation of Jews from Austria to the East. While he was Governor of Austria, political opponents of the Nazis were sent to concentration camps by the Gestapo, mistreated, and often killed.

Criminal Activities in Poland and the Netherlands

In September 1939, Seyss-Inquart was appointed Chief of Civil Administration of South Poland. On 12 October 1939, Seyss-Inquart was made Deputy Governor General of the Government General of Poland under Frank. On 18 May 1940, Seyss-Inquart was appointed Reich Commissioner for Occupied Netherlands. In these positions he assumed responsibility for governing territory which had been occupied by aggressive wars and the administration of which was of vital importance in the aggressive war being waged by Germany.

As Deputy Governor General of the Government General of Poland, Seyss-Inquart was a supporter of the harsh occupation policies which were put in effect. In November 1939, while on an inspection tour through the Government General, Seyss-Inquart stated that Poland was to be so administered as to exploit its economic resources for the benefit of Germany. Seyss-Inquart also advocated the persecution of Jews and was informed of the beginning of the AB Action which involved the murder of many Polish intellectuals.

As Reich Commissioner for Occupied Netherlands, Seyss-Inquart was ruthless in applying terrorism to suppress all opposition to the German occupation, a program which he described as "annihilating" his opponents. In collaboration with the local Higher SS and Police Leaders he was involved in the shooting of hostages for offenses against the occupation authorities and sending to concentration camps all suspected opponents of occupation policies, including priests and educators. Many of the Dutch police were forced to participate in these programs by threats of reprisal against their families. Dutch courts were also forced to participate in this program, but when they indicated their reluctance to give sentences of imprisonment because so many prisoners were in fact killed, a greater emphasis was placed on the use of summary police courts.

Seyss-Inquart carried out the economic administration of the Netherlands without regard for rules of the Hague Convention, which he described as obsolete. Instead, a policy was adopted for the maximum utilization of the economic potential of the Netherlands, and executed with small regard for its effect on the inhabitants. There was widespread pillage of public and private property which was given color of legality by Seyss-Inquart's regulations and assisted by manipulations of the financial institutions of the Netherlands under his control.

As Reich Commissioner for the Netherlands, Seyss-Inquart immediately began sending forced laborers to Germany. Until 1942, labor service in Germany was theoretically voluntary, but was actually coerced by strong economic and governmental pressure. In

1942 Seyss-Inquart formally decreed compulsory labor service, and utilized the services of the Security Police and SD to prevent evasion of his order. During the occupation over 500,000 people were sent from the Netherlands to the Reich as laborers, and only a very small proportion were actually volunteers.

One of Seyss-Inquart's first steps as Reich Commissioner of the Netherlands was to put into effect a series of laws imposing economic discriminations against the Jews. This was followed by decrees requiring their registration, decrees compelling them to reside in ghettos and to wear the star of David, sporadic arrests and detention in concentration camps, and finally, at the suggestion of Heydrich, the mass deportation of almost 120,000 of Holland's 140,000 Jews to Auschwitz and the "final solution." Seyss-Inquart admits knowing that they were going to Auschwitz, but claims that he heard from people who had been to Auschwitz that the Jews were comparatively well-off there, and that he thought that they were being held there for resettlement after the war. In the light of the evidence and on account of his official position it is impossible to believe this claim.

Seyss-Inquart contends that he was not responsible for many of the crimes committed in the occupation of the Netherlands because they were either ordered from the Reich, committed by the Army, over which he had no control, or by the German Higher SS and Police Leader who, he claims, reported directly to Himmler. It is true that some of the excesses were the responsibility of the Army, and that the Higher SS and Police Leader, although he was at the disposal of Seyss-Inquart, could always report directly to Himmler. It is also true that in certain cases Seyss-Inquart opposed the extreme measures used by these other agencies, as when he was largely successful in preventing the Army from carrying out a scorched earth policy, and urged the Higher SS and Police Leaders to reduce the number of hostages to be shot. But the fact remains that Seyss-Inquart was a knowing and voluntary participant in War Crimes and Crimes against Humanity which were committed in the occupation of the Netherlands.

Conclusion

The Tribunal finds that Seyss-Inquart is guilty under Counts Two, Three, and Four; Seyss-Inquart is not guilty on Count One.

MR. BIDDLE:

SPEER

Speer is indicted under all four Counts. Speer joined the Nazi Party in 1932. In 1934 he was made Hitler's architect and became a close personal confidant. Shortly thereafter he was made a department

head in the German Labor Front and the official in charge of capital construction on the staff of the Deputy to the Führer, positions which he held through 1941. On 15 February 1942, after the death of Fritz Todt, Speer was appointed Chief of the Organization Todt and Reich Minister for Armaments and Munitions (after 2 September 1943, for Armaments and War Production). The positions were supplemented by his appointments in March and April 1942 as Plenipotentiary General for Armaments and as a member of the Central Planning Board, both within the Four Year Plan. Speer was a member of the Reichstag from 1941 until the end of the war.

Crimes against Peace

The Tribunal is of opinion that Speer's activities do not amount to initiating, planning, or preparing wars of aggression, or of conspiring to that end. He became the head of the armament industry well after all of the wars had been commenced and were under way. His activities in charge of German armament production were in aid of the war effort in the same way that other productive enterprises aid in the waging of war; but the Tribunal is not prepared to find that such activities involve engaging in the common plan to wage aggressive war as charged under Count One, or waging aggressive war as charged under Count Two.

War Crimes and Crimes against Humanity

The evidence introduced against Speer under Counts Three and Four relates entirely to his participation in the slave labor program. Speer himself had no direct administrative responsibility for this program. Although he had advocated the appointment of a Plenipotentiary General for the Utilization of Labor because he wanted one central authority with whom he could deal on labor matters, he did not obtain administrative control over Sauckel. Sauckel was appointed directly by Hitler, under the decree of 21 March 1942, which provided that he should be directly responsible to Göring, as Plenipotentiary of the Four Year Plan.

As Reich Minister for Armaments and Munitions and Plenipotentiary General for Armaments under the Four Year Plan, Speer had extensive authority over production. His original authority was over construction and production of arms for the OKH. This was progressively expanded to include naval armaments, civilian production, and finally, on 1 August 1944, air armament. As the dominant member of the Central Planning Board, which had supreme authority for the scheduling of German production and the allocation and development of raw materials, Speer took the position that the board had authority to instruct Sauckel to provide laborers for industries under its control and succeeded in sustaining

this position over, the objection of Sauckel. The practice was developed under which Speer transmitted to Sauckel an estimate of the total number of workers needed; Sauckel obtained the labor and allocated it to the various industries in accordance with instructions supplied by Speer.

Speer knew when he made his demands on Sauckel that they would be supplied by foreign laborers serving under compulsion. He participated in conferences involving the extension of the slave labor program for the purpose of satisfying his demands. He was present at a conference held during 10 and 12 August 1942 with Hitler and Sauckel, at which it was agreed that Sauckel should bring laborers by force from occupied territories where this was necessary to satisfy the labor needs of the industries under Speer's control. Speer also attended a conference in Hitler's headquarters on 4 January 1944, at which the decision was made that Sauckel should obtain "at least 4 million new workers from occupied territories" in order to satisfy the demands for labor made by Speer, although Sauckel indicated that he could do this only with help from Himmler.

Sauckel continually informed Speer and his representatives that foreign laborers were being obtained by force. At a meeting of 1 March 1944, Speer's deputy questioned Sauckel very closely about his failure to live up to the obligation to supply 4 million workers from occupied territories. In some cases Speer demanded laborers from specific foreign countries. Thus, at the conference of 10 and 12 August 1942, Sauckel was instructed to supply Speer with "a further million Russian laborers for the German armament industry up to and including October 1942." At a meeting of the Central Planning Board on 22 April 1943, Speer discussed plans to obtain Russian laborers for use in the coal mines and flatly vetoed the suggestion that this labor deficit should be made up by German labor.

Speer has argued that he advocated the reorganization of the labor program to place a greater emphasis on utilization of German labor in war production in Germany and on the use of labor in occupied countries in local production of consumer goods formerly produced in Germany. Speer took steps in this direction by establishing the so-called "blocked industries" in the occupied territories which were used to produce goods to be shipped to Germany. Employees of these industries were immune from deportation to Germany as slave laborers and any worker who had been ordered to go to Germany could avoid deportation if he went to work for a blocked industry. This system, although somewhat less inhumane than deportation to Germany, was still illegal. The system of blocked industries played only a small part in the over-all slave labor program, and Speer urged its co-operation with the slave

labor program, knowing the way in which it was actually being administered. In an official sense, he was its principal beneficiary and he constantly urged its extension.

Speer was also directly involved in the utilization of forced labor as chief of the Organization Todt. The Organization Todt functioned principally in the occupied areas on such projects as the Atlantic Wall and the construction of military highways, and Speer has admitted that he relied on compulsory service to keep it adequately staffed. He also used concentration camp labor in the industries under his control. He originally arranged to tap this source of labor for use in small out-of-the-way factories; and later, fearful of Himmler's jurisdictional ambitions, attempted to use as few concentration camp workers as possible.

Speer was also involved in the use of prisoners of war in armament industries, but contends that he only utilized Soviet prisoners of war in industries covered by the Geneva Convention.

Speer's position was such that he was not directly concerned with the cruelty in the administration of the slave labor program, although he was aware of its existence. For example, at meetings of the Central Planning Board he was informed that his demands for labor were so large as to necessitate violent methods in recruiting. At a meeting of the Central Planning Board on 30 October 1942, Speer voiced his opinion that many slave laborers who claimed to be sick were malingerers and stated: "There is nothing to be said against SS and Police taking drastic steps and putting those known as slackers into concentration camps." Speer, however, insisted that the slave laborers be given adequate food and working conditions so that they could work efficiently.

In mitigation it must be recognized that Speer's establishment of blocked industries did keep many laborers in their homes and that in the closing stages of the war he was one of the few men who had the courage to tell Hitler that the war was lost and to take steps to prevent the senseless destruction of production facilities, both in occupied territories and in Germany. He carried out his opposition to Hitler's scorched earth program in some of the Western countries and in Germany by deliberately sabotaging it at considerable personal risk.

Conclusion

The Tribunal finds that Speer is not guilty on Counts One and Two, but is guilty under Counts Three and Four.

VON NEURATH

Von Neurath is indicted under all four Counts. He is a professional diplomat who served as German Ambassador to Great Britain from 1930 to 1932. On 2 June 1932, he was appointed Minister of

Foreign Affairs in the Von Papen Cabinet, a position which he held under the Cabinets of Von Schleicher and Hitler. Von Neurath resigned as Minister of Foreign Affairs on 4 February 1938, and was made Reich Minister without Portfolio, President of the Secret Cabinet Council, and a member of the Reich Defense Council. On 18 March 1939, he was appointed Reich Protector for Bohemia and Moravia and served in this capacity until 27 September 1941. He held the formal rank of Obergruppenführer in the SS.

Crimes against Peace

As Minister of Foreign Affairs, Von Neurath advised Hitler in connection with the withdrawal from the Disarmament Conference and the League of Nations on 14 October 1933; the institution of rearmament; the passage, on 16 March 1935, of the law for universal military service; and the passage, on 21 May 1935, of the secret Reich Defense Law. He was a key figure in the negotiation of the Naval Accord entered into between Germany and England on 18 June 1935. Von Neurath played an important part in Hitler's decision to reoccupy the Rhineland on 7 March 1936, and predicted that the occupation could be carried through without any reprisals from the French. On 18 May 1936, he told the American Ambassador to France that it was the policy of the German Government to do nothing in foreign affairs until "the Rhineland had been digested," and that as soon as the fortifications in the Rhineland had been constructed and the countries of central Europe realized that France could not enter Germany at will, "all those countries will begin to feel very differently about their foreign policies and a new constellation will develop."

Von Neurath took part in the Hossbach conference of 5 November 1937. He has testified that he was so shocked by Hitler's statements that he had a heart attack. Shortly thereafter, he offered to resign, and his resignation was accepted on 4 February 1938, at the same time that Von Fritsch and Von Blomberg were dismissed. Yet with knowledge of Hitler's aggressive plans he retained a formal relationship with the Nazi regime as Reich Minister without Portfolio, President of the Secret Cabinet Council, and a member of the Reich Defense Council. He took charge of the Foreign Office at the time of the occupation of Austria, assured the British Ambassador that this had not been caused by a German ultimatum, and informed the Czechoslovakian Minister that Germany intended to abide by its arbitration convention with Czechoslovakia. Von Neurath participated in the last phase of the negotiations preceding the Munich Pact but contends that he entered these discussions only to urge Hitler to make every effort to settle the issues by peaceful means.

Criminal Activities in Czechoslovakia

Von Neurath was appointed Reich Protector for Bohemia and Moravia on 18 March 1939. Bohemia and Moravia were occupied by military force. Hacha's consent, obtained as it was by duress, cannot be considered as justifying the occupation. Hitler's decree of 16 March 1939, establishing the Protectorate, stated that this new territory should "belong henceforth to the territory of the German Reich," an assumption that the Republic of Czechoslovakia no longer existed. But it also went on the theory that Bohemia and Moravia retained their sovereignty subject only to the interests of Germany as expressed by the Protectorate. Therefore, even if the doctrine of subjugation should be considered to be applicable to territory occupied by aggressive action, the Tribunal does not believe that this proclamation amounted to an incorporation which was sufficient to bring the doctrine into effect. The occupation of Bohemia and Moravia must therefore be considered a military occupation covered by the rules of warfare. Although Czechoslovakia was not a party to the Hague Convention of 1907, the rules of land warfare expressed in this Convention are declaratory of existing international law and hence are applicable.

As Reich Protector, Von Neurath instituted an administration in Bohemia and Moravia similar to that in effect in Germany. The free press, political parties, and trade unions were abolished. All groups which might serve as opposition were outlawed. Czechoslovakian industry was worked into the structure of German war production, and exploited for the German war effort. Nazi anti-Semitic policies and laws were also introduced. Jews were barred from leading positions in government and business.

In August 1939 Von Neurath issued a proclamation warning against any acts of sabotage and stating that "the responsibility for all acts of sabotage is attributed not only to individual perpetrators but to the entire Czech population." When the war broke out on 1 September 1939, 8,000 prominent Czechs were arrested by the Security Police in Bohemia and Moravia and put into protective custody. Many of this group died in concentration camps as a result of mistreatment.

In October and November 1939, Czechoslovakian students held a series of demonstrations. As a result, on Hitler's orders all universities were closed, 1,200 students imprisoned, and the nine leaders of the demonstration shot by Security Police and SD. Von Neurath testified that he was not informed of this action in advance, but it was announced by proclamation over his signature posted on placards throughout the Protectorate, which he claims, however, was done without his authority.

On 31 August 1940 Von Neurath transmitted to Lammers a memorandum which he had prepared dealing with the future of the Protectorate, and a memorandum with his approval prepared by Karl Hermann Frank on the same subject. Both dealt with the question of Germanization and proposed that the majority of the Czechs might be assimilated racially into the German nation. Both advocated the elimination of the Czechoslovakian intelligentsia and other groups which might resist Germanization, Von Neurath's by expulsion, Frank's by expulsion or "special treatment."

Von Neurath has argued that the actual enforcement of the repressive measures was carried out by the Security Police and SD who were under the control of his state secretary, Karl Hermann Frank, who was appointed at the suggestion of Himmler and who, as Higher SS and Police Leader, reported directly to Himmler. Von Neurath further argues that anti-Semitic measures and those resulting in economic exploitation were put into effect in the Protectorate as the result of policies decided upon in the Reich. However this may be, he served as the chief German official in the Protectorate when the administration of this territory played an important role in the wars of aggression which Germany was waging in the East, knowing that war crimes and crimes against humanity were being committed under his authority.

In mitigation it must be remembered that he did intervene with the Security Police and SD for the release of many of the Czechoslovaks who were arrested on 1 September 1939, and for the release of students arrested later in the fall. On 23 September 1941 he was summoned before Hitler and told that he was not being harsh enough and that Heydrich was being sent to the Protectorate to combat the Czechoslovakian resistance groups. Von Neurath attempted to dissuade Hitler from sending Heydrich, and when he was not successful offered to resign. When his resignation was not accepted he went on leave, on 27 September 1941, and refused to act as Protector after that date. His resignation was formally accepted in August 1943.

Conclusion

The Tribunal finds that Von Neurath is guilty under all four Counts.

THE PRESIDENT:

FRITZSCHE

Fritzsche is indicted on Counts One, Three, and Four. He was best known as a radio commentator, discussing once a week the events of the day on his own program, "Hans Fritzsche Speaks." He began broadcasting in September 1932; in the same year he was

made the head of the Wireless News Service, a Reich Government agency. When on 1 May 1933, this agency was incorporated by the National Socialists into their Reich Ministry of Popular Enlightenment and Propaganda, Fritzsche became a member of the Nazi Party and went to that Ministry. In December 1938 he became head of the Home Press Division of the Ministry; in October 1942 he was promoted to the rank of Ministerial Director. After serving briefly on the Eastern Front in a propaganda company, he was, in November 1942, made head of the Radio Division of the Propaganda Ministry and Plenipotentiary for the Political Organization of the Greater German Radio.

Crimes against Peace

As head of the Home Press Division, Fritzsche supervised the German press of 2,300 daily newspapers. In pursuance of this function he held daily press conferences to deliver the directives of the Propaganda Ministry to these papers. He was, however, subordinate to Dietrich, the Reich Press Chief, who was in turn a subordinate of Goebbels. It was Dietrich who received the directives to the press of Goebbels and other Reich Ministers, and prepared them as instructions which he then handed to Fritzsche for the press.

From time to time, the "Daily Paroles of the Reich Press Chief," as these instructions were labelled, directed the press to present to the people certain themes, such as the leadership principle, the Jewish problem, the problem of living space, or other standard Nazi ideas. A vigorous propaganda campaign was carried out before each major act of aggression. While Fritzsche headed the Home Press Division, he instructed the press how the actions or wars against Bohemia and Moravia, Poland, Yugoslavia, and the Soviet Union should be dealt with. Fritzsche had no control of the formulation of these propaganda policies. He was merely a conduit to the press of the instructions handed him by Dietrich. In February 1939 and before the absorption of Bohemia and Moravia, for instance, he received Dietrich's order to bring to the attention of the press Slovakia's efforts for independence, and the anti-Germanic policies and politics of the existing Prague Government. This order to Dietrich originated in the Foreign Office.

The Radio Division, of which Fritzsche became the head in November 1942, was one of the 12 divisions of the Propaganda Ministry. In the beginning Dietrich and other heads of divisions exerted influence over the policies to be followed by radio. Towards the end of the war, however, Fritzsche became the sole authority within the Ministry for radio activities. In this capacity he formulated and issued daily radio "paroles" to all Reich propaganda offices, according to the general political policies of the Nazi regime,

subject to the directives of the Radio-Political Division of the Foreign Office, and the personal supervision of Goebbels.

Fritzsche, with other officials of the Propaganda Ministry, was present at Goebbels' daily staff conferences. Here they were instructed in the news and propaganda policies of the day. After 1943 Fritzsche himself occasionally held these conferences, but only when Goebbels and his state secretaries were absent. And even then his only function was to transmit Goebbels' directives relayed to him by telephone.

This is the summary of Fritzsche's positions and influence in the Third Reich. Never did he achieve sufficient stature to attend the planning conferences which led to aggressive war; indeed according to his own uncontradicted testimony he never even had a conversation with Hitler. Nor is there any showing that he was informed of the decisions taken at these conferences. His activities cannot be said to be those which fall within the definition of the common plan to wage aggressive war as already set forth in this Judgment.

War Crimes and Crimes against Humanity

The Prosecution has asserted that Fritzsche incited and encouraged the commission of war crimes, by deliberately falsifying news to arouse in the German people those passions which led them to the commission of atrocities under Counts Three and Four. His position and official duties were not sufficiently important, however, to infer that he took part in originating or formulating propaganda campaigns.

Excerpts in evidence from his speeches show definite anti-Semitism on his part. He broadcast, for example, that the war had been caused by Jews and said their fate had turned out "as unpleasant as the Führer predicted." But these speeches did not urge persecution or extermination of Jews. There is no evidence that he was aware of their extermination in the East. The evidence moreover shows that he twice attempted to have publication of the anti-Semitic *Der Stürmer* suppressed, though unsuccessfully.

In these broadcasts Fritzsche sometimes spread false news, but it was not proved he knew it to be false. For example, he reported that no German U-Boat was in the vicinity of the *Athenia* when it was sunk. This information was untrue; but Fritzsche, having received it from the German Navy, had no reason to believe it was untrue.

It appears that Fritzsche sometimes made strong statements of a propagandistic nature in his broadcasts. But the Tribunal is not prepared to hold that they were intended to incite the German people to commit atrocities on conquered peoples, and he cannot be

held to have been a participant in the crimes charged. His aim was rather to arouse popular sentiment in support of Hitler and the German war effort.

Conclusion

The Tribunal finds that Fritzsche is not guilty under this Indictment, and directs that he shall be discharged by the Marshal when the Tribunal presently adjourns.

GEN. NIKITCHENKO:

BORMANN

Bormann is indicted on Counts One, Three, and Four. He joined the National Socialist Party in 1925, was a member of the Staff of the Supreme Command of the SA from 1928 to 1930, was in charge of the Aid Fund of the Party, and was Reichsleiter from 1933 to 1945. From 1933 to 1941 he was Chief of Staff in the office of the Führer's Deputy and, after the flight of Hess to England, became Head of the Party Chancellery on 12 May 1941. On 12 April 1943 he became Secretary to the Führer. He was political and organizational head of the Volkssturm and a general in the SS.

Crimes against Peace

Bormann, in the beginning a minor Nazi, steadily rose to a position of power and, particularly in the closing days, of great influence over Hitler. He was active in the Party's rise to power and even more so in the consolidation of that power. He devoted much of his time to the persecution of the Churches and of the Jews within Germany.

The evidence does not show that Bormann knew of Hitler's plans to prepare, initiate, or wage aggressive wars. He attended none of the important conferences when Hitler revealed piece by piece these plans for aggression. Nor can knowledge be conclusively inferred from the positions he held. It was only when he became head of the Party Chancellery in 1941, and later in 1943 Secretary to the Führer, when he attended many of Hitler's conferences, that his positions gave him the necessary access. Under the view stated elsewhere which the Tribunal has taken of the conspiracy to wage aggressive war, there is not sufficient evidence to bring Bormann within the scope of Count One.

War Crimes and Crimes against Humanity

By decree of 29 May 1941 Bormann took over the offices and powers held by Hess; by decree of 24 January 1942 these powers were extended to give him control over all laws and directives

issued by Hitler. He was thus responsible for laws and orders issued thereafter. On 1 December 1942, all Gaue became Reich defense districts, and the Party Gauleiter responsible to Bormann were appointed Reich Defense Commissioners. In effect, this made them the administrators of the entire civilian war effort. This was so not only in Germany, but also in those territories which were incorporated into the Reich from the absorbed and conquered territories.

Through this mechanism Bormann controlled the ruthless exploitation of the subjected populace. His order of 12 August 1942 placed all Party agencies at the disposal of Himmler's program for forced resettlement and denationalization of persons in the occupied countries. Three weeks after the invasion of Russia, he attended the conference of 16 July 1941 at Hitler's field quarters with Göring, Rosenberg, and Keitel; Bormann's report shows that there were discussed and developed detailed plans of enslavement and annihilation of the population of these territories. And on 8 May 1942 he conferred with Hitler and Rosenberg on the forced resettlement of Dutch personnel in Latvia, the extermination program in Russia, and the economic exploitation of the Eastern territories. He was interested in the confiscation of art and other properties in the East. His letter of 11 January 1944 called for the creation of a large-scale organization to withdraw commodities from the occupied territories for the bombed-out German populace.

Bormann was extremely active in the persecution of the Jews not only in Germany but also in the absorbed or conquered countries. He took part in the discussions which led to the removal of 60,000 Jews from Vienna to Poland in co-operation with the SS and the Gestapo. He signed the decree of 31 May 1941 extending the Nuremberg Laws to the annexed Eastern territories. In an order of 9 October 1942 he declared that the permanent elimination of Jews in Greater German territory could no longer be solved by emigration, but only by applying "ruthless force" in the special camps in the East. On 1 July 1943 he signed an ordinance withdrawing Jews from the protection of the law courts and placing them under the exclusive jurisdiction of Himmler's Gestapo.

Bormann was prominent in the slave labor program. The Party leaders supervised slave labor matters in the respective Gaue, including employment, conditions of work, feeding, and housing. By his circular of 5 May 1943 to the Leadership Corps, distributed down to the level of Ortsgruppenleiter, he issued directions regulating the treatment of foreign workers, pointing out they were subject to SS control on security problems, and ordered the previous mistreatment to cease. A report of 4 September 1942 relating to the transfer of 500,000 female domestic workers from the East to Germany showed that control was to be exercised by Sauckel, Himmler, and Bormann.

Sauckel by decree of 8 September directed the Kreisleiter to supervise the distribution and assignment of these female laborers.

Bormann also issued a series of orders to the Party leaders dealing with the treatment of prisoners of war. On 5 November 1941 he prohibited decent burials for Russian prisoners of war. On 25 November 1943 he directed Gauleiter to report cases of lenient treatment of prisoners of war. And on 13 September 1944 he ordered liaison between the Kreisleiter with the camp commandants in determining the use to be made of prisoners of war for forced labor. On 29 January 1943 he transmitted to his leaders OKW instructions allowing the use of fire arms and corporal punishment on recalcitrant prisoners of war contrary to the rules of land warfare. On 30 September 1944 he signed a decree taking from the OKW jurisdiction over prisoners of war and handing them over to Himmler and the SS.

Bormann is responsible for the lynching of Allied airmen. On 30 May 1944 he prohibited any police action or criminal proceedings against persons who had taken part in the lynching of Allied fliers. This was accompanied by a Goebbels propaganda campaign inciting the German people to take action of this nature, and the conference of 6 June 1944 where regulations for the application of lynching were discussed.

His counsel, who has labored under difficulties, was unable to refute this evidence. In the face of these documents which bear Bormann's signature it is difficult to see how he could do so even were the defendant present. Counsel has argued that Bormann is dead and that the Tribunal should not avail itself of Article 12 of the Charter which gives it the right to take proceedings *in absentia*. But the evidence of death is not conclusive, and the Tribunal, as previously stated, determined to try him *in absentia*. If Bormann is not dead and is later apprehended, the Control Council for Germany may, under Article 29 of the Charter, consider any facts in mitigation, and alter or reduce his sentence, if deemed proper.

Conclusion

The Tribunal finds that Bormann is not guilty on Count One, but is guilty on Counts Three and Four.

THE PRESIDENT: Before pronouncing sentence on any of the defendants, and while all the defendants are present, the Tribunal takes the occasion to advise them that any application to the clemency of the Control Council must be lodged with the General Secretary of this Tribunal within 4 days from today.

The Tribunal will now adjourn and will sit again at 10 minutes to three.

[A recess was taken until 1450 hours.]

Afternoon Session

THE PRESIDENT: In accordance with Article 27 of the Charter, the International Military Tribunal will now pronounce the sentences on the defendants convicted on this Indictment:

"Defendant Hermann Wilhelm Göring, on the Counts of the Indictment on which you have been convicted, the International Military Tribunal sentences you to death by hanging.

"Defendant Rudolf Hess, on the Counts of the Indictment on which you have been convicted, the Tribunal sentences you to imprisonment for life.

"Defendant Joachim von Ribbentrop, on the Counts of the Indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

"Defendant Wilhelm Keitel, on the Counts of the Indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

"Defendant Ernst Kaltenbrunner, on the Counts of the Indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

"Defendant Alfred Rosenberg, on the Counts of the Indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

"Defendant Hans Frank, on the Counts of the Indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

"Defendant Wilhelm Frick, on the Counts of the Indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

"Defendant Julius Streicher, on the Count of the Indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

"Defendant Walter Funk, on the Counts of the Indictment on which you have been convicted, the Tribunal sentences you to imprisonment for life.

"Defendant Karl Dönitz, on the Counts of the Indictment on which you have been convicted, the Tribunal sentences you to ten years' imprisonment.

"Defendant Erich Raeder, on the Counts of the Indictment on which you have been convicted, the Tribunal sentences you to imprisonment for life.

"Defendant Baldur von Schirach, on the Count of the Indictment on which you have been convicted, the Tribunal sentences you to twenty years' imprisonment.

"Defendant Fritz Sauckel, on the Counts of the Indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

"Defendant Alfred Jodl, on the Counts of the Indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

"Defendant Arthur Seyss-Inquart, on the Counts of the Indictment on which you have been convicted, the Tribunal sentences you to death by hanging.

"Defendant Albert Speer, on the Counts of the Indictment on which you have been convicted, the Tribunal sentences you to twenty years' imprisonment.

"Defendant Konstantin von Neurath, on the Counts of the Indictment on which you have been convicted, the Tribunal sentences you to fifteen years' imprisonment."

The Tribunal sentences the Defendant Martin Bormann, on the Counts of the Indictment on which he has been convicted, to death by hanging.

I have an announcement to make. The Soviet member of the International Military Tribunal desires to record his dissent from the decisions in the cases of the Defendants Schacht, Von Papen, and Fritzsche. He is of the opinion that they should have been convicted and not acquitted.

He also dissents from the decisions in respect to the Reich Cabinet and the General Staff and High Command, being of the opinion that they should have been declared to be criminal organizations.

He also dissents from the decision in the case of the sentence on the Defendant Hess and is of the opinion that the sentence should have been death, and not life imprisonment.

This dissenting opinion will be put into writing and annexed to the Judgment, and will be published as soon as possible.

[The Tribunal adjourned.]

Appendix

containing corrections to translations of documents quoted in the Judgment.

[1]) "Treaty" should read "Church," according to the original document, Number USA-348.

[2]) The letter "A" should read "R," according to the original document, Number USA-43.

[3]) The German word "Angriff" would here better be rendered by "aggression."

[4]) According to the original document, 502-PS, the first sentence of the quotation should read: "The mission of the detachments is the political investigation of all camp inmates, the segregation and further processing . . ."

[5]) "Commanders" should read "detachments."

[6]) "Intelligence" should read "intelligentsia."

[7]) "Fleckfieber" should be rendered as "typhus" rather than as "spotted fever."

[8]) "Bummelanten" should be translated "slackers" rather than "tramps."

[9]) Should read: "How the Russians or Czechs fare is absolutely immaterial to me."

[10]) Accurate translation should read: "It has been confirmed that apart from the works of art known to us in Germany . . . such as, for example, the Veit Stoss altar and the plates of Hans von Kulmbach in the Church of Maria in Kraków . . . and several other works from the National Museum in Warsaw, not very much exists which would constitute a material contribution to German art treasures."

[11]) "16 October" should read "18 October," according to Document EC-408, USA-519.

[12]) The original German version "auf alle Fälle" is better rendered as "at any rate."

[13]) "8 February" should read "6 February."

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